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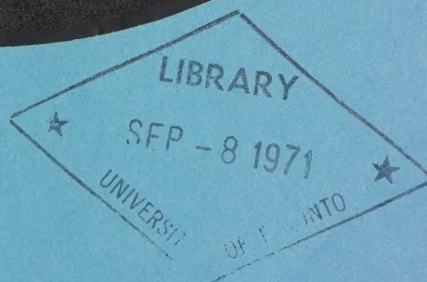
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Monthly Report



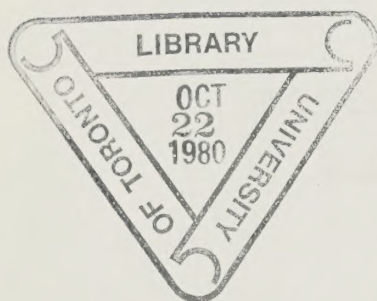
ONTARIO LABOUR RELATIONS BOARD

ONTARIO LABOUR RELATIONS BOARD REPORTS

A MONTHLY SERIES OF DECISIONS FROM THE

ONTARIO LABOUR RELATIONS BOARD

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ACCREDITATION - PRACTICE - FORM 68 - NATURE OF DETAILS
REQUIRED.

HAMILTON AND DISTRICT SHEET METAL CONTRACTORS INC. V. SHEET METAL WORKERS INTERNATIONAL ASSOCIATION LOCAL UNION 537 HAMILTON ONTARIO BRANCH V. LOCAL UNION 736 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS V. LOCAL UNION 67 UNITED ASSOCIATION V. LOCAL UNION 105 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORK- ERS	444
BARGAINING RIGHTS - COLLECTIVE AGREEMENT - UNION HOLD- ING BARGAINING RIGHTS - BARGAINING RIGHTS NOT TER- MINATED - UNION NOT ABANDONING - AT TIME OF SIGN- ING OF AGREEMENT NO EMPLOYEES - WHETHER UNION CON- TINUES TO HOLD BARGAINING RIGHTS.	
FRED KUEHNER V. LOCAL UNION 1824, OF THE INTERNA- TIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES	428
BARGAINING UNIT - COMMUNITY OF INTEREST - WHETHER DIN- ING LOUNGE EMPLOYEES SHARE COMMUNITY OF INTEREST WITH EMPLOYEES IN COFFEE SHOP RATHER THAN EMPLOYEES IN BEVERAGE ROOMS AND COCKTAIL LOUNGES.	
RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL: CIO:CLC V. CASWELL HOTEL (SAULT) UNITED V. GROUP OF EMPLOYEES	446
BARGAINING UNIT - CONTRACTS TO PERFORM JANITORIAL SER- VICES - WHETHER SOME CONTRACTS WITHIN FEDERAL JUR- ISDICTION.	
SERVICE EMPLOYEES UNION, LOCAL 204, AFFILIATED WITH THE S.E.I.U. A.F. OF L., C.I.O., C.L.C. V. NATION- WIDE INTERIOR MAINTENANCE CO. LTD.	459
BARGAINING UNIT - EMPLOYEES - REGISTERED NURSING ASSIS- TANTS - WHETHER INCLUDED IN ALL EMPLOYEE BARGAINING UNIT OR WITH PROFESSIONAL NURSING STAFF.	
SERVICE EMPLOYEES UNION, LOCAL 204 AFFILIATED WITH THE S.E.I.U. A.F. OF L., C.I.O., C.L.C. V. ALTAMONT NURSING HOME LIMITED	361

BARGAINING UNIT - WHETHER BOARD WILL INCLUDE EMPLOYEES WHO
WORK OUTSIDE IN A BARGAINING UNIT OF EMPLOYEES WHO
WORK INSIDE.

OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION v.
CO-OPERATORS INSURANCE ASSOCIATION OF GUELPH v. GROUP
OF EMPLOYEES 443

BARGAINING UNIT - SECURITY GUARDS - INTERCHANGE OF
EMPLOYEES AMONG CONTRACTS OF EMPLOYER - WHETHER UNION
CAN ORGANIZE EMPLOYEES ON A CONTRACT BASIS.

INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF
AMERICA, LOCAL UNION 1962 v. INDUSTRIAL AND DOMESTIC
PROTECTION COMPANY LIMITED, AND FAIRVIEW CORPORATION
LIMITED 415

BARGAINING UNIT - S. 1(4) - LITHOGRAPHERS - APPROPRIATE
DESCRIPTION OF BARGAINING UNIT - SIX COMPANIES AT
SOME LOCATION - WHETHER COMMON CONTROL AND DIRECTION -
WHETHER BOARD WILL TREAT COMPANIES AS ONE EMPLOYER -
APPLICABLE CRITERIA.

LOCAL 12-L, LITHOGRAPHERS AND PHOTOENGRAVERS INTERNA-
TIONAL UNION v. WALTERS LITHOGRAPHING COMPANY LIMITED,
YASHAR LITHOGRAPHING LIMITED, ONTARIO LITHOGRAPHING
COMPANY LIMITED, KENNEDY GRAPHIC PLATES LIMITED, BURTCH
LITHOGRAPHIC LIMITED AND TORONTO LITHOGRAPHING COMPANY
LIMITED 406

CHARGES - AMENDMENT TO CHARGES - NECESSITY FOR BOARD TO
ADJOURN - WHETHER PARTY HAD KNOWLEDGE OR BY REASON-
ABLE DILIGENT INQUIRY COULD HAVE ACQUIRED KNOWLEDGE -
WHETHER PARTICULARS SUPPORT CHARGES ON DIFFERENT
GROUNDS - WHETHER BOARD WILL PERMIT AMENDMENT TO
CHARGES - CONSIDERATIONS APPLICABLE.

TEXTILE WORKERS UNION OF AMERICA AFL-CIO-CLC v. FED-
ERAL PACKAGING AND PARTITION COMPANY LIMITED v. FED-
ERAL PACKAGING EMPLOYEES ASSOCIATION v. GROUP OF EM-
PLOYEES 448

CHARGES - MEMBERSHIP EVIDENCE - WHETHER ACTIONS OF NON-
WORKING FOREMEN COERCIVE - WHETHER MEMBERSHIP CARDS
SIGNED UNDER CONDITIONS WHICH MANIFESTLY IMPAIRED
THE FREEDOM OF EMPLOYEES TO FREELY SELECT THEIR OWN
BARGAINING AGENT.

CANADIAN UNION OF CONSTRUCTION WORKERS v. RELLIFORMS
LIMITED v. INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL 793 v. COUNCIL OF CONCRETE-FORMING TRADE UNIONS 434

COLLECTIVE AGREEMENT - BARGAINING RIGHTS - UNION HOLDING
BARGAINING RIGHTS - BARGAINING RIGHTS NOT TERMINATED -
UNION NOT ABANDONING - AT TIME OF SIGNING OF AGREE-
MENT NO EMPLOYEES - WHETHER UNION CONTINUES TO HOLD
BARGAINING RIGHTS.

FRED KUEHNER v. LOCAL UNION 1824, OF THE INTERNATIONAL
BROTHERHOOD OF PAINTERS AND ALLIED TRADES 428

EMPLOYEE - BARGAINING UNIT - REGISTERED NURSING ASSIS-
TANTS - WHETHER INCLUDED IN ALL EMPLOYEE BARGAIN-
ING UNIT OR WITH PROFESSIONAL NURSING STAFF.

SERVICE EMPLOYEES UNION, LOCAL 204 AFFILIATED WITH
THE S.E.I.U. A.F. OF L., C.I.O., C.L.C. v. ALTAMONT
NURSING HOME LIMITED 361

EMPLOYEE - FOREMAN - FORELADIES - WHETHER EXERCISING MAN-
AGERIAL FUNCTIONS - JOB TITLE - ONUS OF PROOF.

TEXTILE WORKERS UNION OF AMERICA, AFL-CIO-CLC v.
FEDERAL PACKAGING AND PARTITION COMPANY LIMITED v.
FEDERAL PACKAGING EMPLOYEES ASSOCIATION v. GROUP
OF EMPLOYEES 448

EVIDENCE - COMPANY PREPARED TO SUBMIT TO BOARD BUT NOT
TO UNION NAME OF EMPLOYEES AND CONTRACTS WHICH COM-
PANY SERVICED - WHETHER BOARD WILL MAKE A DECISION
ON MATTERS NOT DISCLOSED TO OTHER PARTY.

INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF
AMERICA, LOCAL UNION 1962 v. INDUSTRIAL AND DOMESTIC
PROTECTION COMPANY LIMITED, AND FAIRVIEW CORPORATION
LIMITED 415

EVIDENCE - WHETHER BOARD WILL EXAMINE PROPOSED AMENDMENTS
TO SECTION MADE IN LEGISLATURE WHICH WAS DEFEATED AS
AN AID IN INTERPRETING SECTION.

KLAAS STEL v. THE NORTH YORK CIVIC EMPLOYEES UNION,
LOCAL 94, CANADIAN UNION OF PUBLIC EMPLOYEES v. THE
CORPORATION OF THE BOROUGH OF NORTH YORK 363

EVIDENCE - STATUTE - WHETHER EXPERT EVIDENCE ADMISSIBLE
TO DEFINE WORD IN STATUTE - WHETHER WORDS OF COMMON
OR UNCOMMON USE.

KLAAS STEL v. THE NORTH YORK CIVIC EMPLOYEES UNION, LOCAL 94, CANADIAN UNION OF PUBLIC EMPLOYEES v. THE CORPORATION OF THE BOROUGH OF NORTH YORK	363
JURISDICTIONAL DISPUTE - LABOURERS AND CARPENTERS TUBULAR METAL SCAFFOLDING.	
ABE DICK MASONRY LIMITED v. LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 493 AND UNITED BROTHER- HOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 2486	432
JURISDICTIONAL DISPUTE - PLUMBERS AND LABOURERS - EQUIP- MENT SUPPLIED BY OWNER TO BE INSTALLED BY MECHANICAL CONTRACTOR USING PLUMBERS - DISPUTE AS TO UNLOADING AND PLACING INTO POSITION OF EQUIPMENT - WORK ASSIGNED TO LABOURERS.	
PIGOTT CONSTRUCTION COMPANY LIMITED v. LABOURERS' IN- TERNATIONAL UNION OF NORTH AMERICA, LOCAL 597 AND LOCAL UNION 463 OF THE UNITED ASSOCIATION OF JOURNEY- MEN OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA	419
LOCKOUT - ELEMENTS REQUIRED TO ESTABLISH A LOCKOUT.	
INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 v. S. McNALLY & SONS, LIMITED	430
MEMBERSHIP EVIDENCE - CHARGES - WHETHER ACTIONS OF NON- WORKING FOREMEN COERCIVE - WHETHER MEMBERSHIP CARDS SIGNED UNDER CONDITIONS WHICH MANIFESTLY IMPAIRED THE FREEDOM OF EMPLOYEES TO FREELY SELECT THEIR OWN BARGAINING AGENT.	
CANADIAN UNION OF CONSTRUCTION WORKERS v. RELLIFORMS LIMITED v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 v. COUNCIL OF CONCRETE-FORMING TRADE UNIONS	434
PETITION - TERMINATION - REPRESENTATION VOTE - WHETHER APPLICANTS HAD VOLUNTARILY SIGNED THE PETITION - STATEMENTS IN NEWSLETTER - WHETHER FALSE LEADING OR LIBELLOUS - WHETHER STATEMENTS COMPELLED OR COERCED A REASONABLE EMPLOYEE BY THREAT OR PROMISE TO DO THAT WHICH HE WOULD NOT OTHERWISE HAVE DONE - WHETHER EMPLOYEES HAVE TIME AND OPPORTUNITY TO WEIGH STATEMENTS.	

KURT GAYLE, OSBORNE BEST, CHRISTIPHIN ROLLINS, GLADYS PALMER, COLSTONE LOVELL v. SERVICE EMPLOYEES' UNION, LOCAL 204 v. TORONTO GENERAL HOSPITAL	357
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PRACTICE - ACCREDITATION - FORM 68 - NATURE OF DETAILS REQUIRED.

HAMILTON AND DISTRICT SHEET METAL CONTRACTORS INC. SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION LOCAL UNION 537 HAMILTON ONTARIO BRANCH v. LOCAL UNION 736 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS v. LOCAL UNION 67 UNITED ASSOCIATION v. LOCAL UNION 105 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS	444
---	-----

PRACTICE - MISTAKE MADE IN NAME OF RESPONDENT - WHETHER RESPONDENT NON-EXISTENT AND APPLICATION A NULLITY - SIMILARITY OF NAME - WHETHER BONA FIDE MISTAKE.

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 v. 227223 EARTH MOVING LIMITED TRADING AS MAPLE EARTH MOVING COMPANY	445
---	-----

RELIGIOUS OBJECTION - S. 35A - EMPLOYEE REQUESTING EXEMPTION FROM UNION MEMBERSHIP AND PAYMENT OF DUES, FEES OR ASSESSMENTS TO UNION - WHETHER NECESSARY TO OBJECT TO JOINING ALL TRADE UNIONS - MEANING OF RELIGIOUS CONVICTION OR BELIEF - WHETHER BOARD WILL EXERCISE ITS DISCRETION.

KLAAS STEL v. THE NORTH YORK CIVIC EMPLOYEES UNION, LOCAL 94, CANADIAN UNION OF PUBLIC EMPLOYEES v. THE CORPORATION OF THE BOROUGH OF NORTH YORK	363
--	-----

RELIGIOUS OBJECTION - S. 35A - EMPLOYEE REQUESTING EXEMPTION FROM UNION MEMBERSHIP AND PAYMENT OF UNION DUES - WHETHER APPLICANT MUST OBJECT TO JOINING "A" TRADE UNION OR "ANY" TRADE UNION - WHETHER SUFFICIENT FOUNDATION FOR BELIEF - WHETHER BELIEF SINCERELY HELD.

JOHN RENSO NOBLES v. THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL UNION NO. 1065 v. JOSEPH BRANT MEMORIAL HOSPITAL OF THE BURLINGTON-NELSON HOSPITAL	393
---	-----

REPRESENTATION VOTE - TERMINATION - PETITION - WHETHER APPLICANTS HAD VOLUNTARILY SIGNED THE PETITION - STATEMENTS IN NEWSLETTER - WHETHER FALSE LEADING

OR LIBELLOUS - WHETHER STATEMENTS COMPELLED OR
COERCED A REASONABLE EMPLOYEE BY THREAT OR PROMISE
TO DO THAT WHICH HE WOULD NOT OTHERWISE HAVE DONE -
WHETHER EMPLOYEES HAVE TIME AND OPPORTUNITY TO
WEIGHT STATEMENTS.

KURT GAYLE, OSBORNE BEST, CHRISTIPHIN ROLLINS, GLADYS PALMER, COLSTONE LOVELL v. SERVICE EMPLOYEES' UNION, LOCAL 204 v. TORONTO GENERAL HOSPITAL	357
SALE OF A BUSINESS - S. 47A - RECEIVING ORDER MADE AND BUSI- NESS IN HANDS OF TRUSTEE - WHETHER SALE OF BUSINESS TO RESPONDENT.	
INTERNATIONAL UNION OF DOLL & TOY WORKERS OF U.S.A. AND CANADA, LOCAL 905 v. GOODTIME TOYS INC.	360
SECTION 65 - AGGRIEVED PERSONS SEEKING WAGES AND/OR DAMAGES FOR ALLEGED BREACH OF CONTRACT - WHETHER BOARD HAS JURISDICTION.	
JOHN DAMJANOV v. MR. A. GALLAGER AND MR. S. KOEHLER	362
STATUTE - EVIDENCE - WHETHER EXPERT EVIDENCE ADMISSIBLE TO DEFINE WORD IN STATUTE - WHETHER WORDS OF COMMON OR UNCOMMON USE.	
KLAAS STEL v. THE NORTH YORK CIVIC EMPLOYEES UNION, LOCAL 94, CANADIAN UNION OF PUBLIC EMPLOYEES v. THE CORPORATION OF THE BOROUGH OF NORTH YORK	363
TERMINATION - REPRESENTATION VOTE - PETITION - WHETHER APPLICANTS HAD VOLUNTARILY SIGNED THE PETITION - STATEMENTS IN NEWSLETTER - WHETHER FALSE LEADING OR LIBELLOUS - WHETHER STATEMENTS COMPELLED OR COERCED A REASONABLE EMPLOYEE BY THREAT OR PROMISE TO DO THAT WHICH HE WOULD NOT OTHERWISE HAVE DONE - WHETHER EMPLOYEES HAVE TIME AND OPPORTUNITY TO WEIGH STATEMENTS.	
KURT GAYLE, OSBORNE BEST, CHRISTIPHIN ROLLINS, GLADYS PALMER, COLSTONE LOVELL v. SERVICE EMPLOYEES' UNION, LOCAL 204 v. TORONTO GENERAL HOSPITAL	357
TERMINATION - S. 43 - SECOND APPLICATION WITHIN OPEN PERIOD - FIRST APPLICATION DISMISSED - COUNSEL FAILING TO CALL EVIDENCE AND ASSUMING FULL RESPONSIBILITY - WHETHER BOARD WILL IMPOSE A BAR - WHETHER SECOND APPLICATION TIMELY,	
KART HULT, GABRIEL DOUVILLE, LES MCPHEE, MAURICE GREZEL v. BAKERY AND CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 483 v. SOO DAIRIES LIMITED	439

659-71-JD: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (COMPLAINANT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 18 AND JOHN E. SMITH & SON LATH, PLASTER & ACOUSTICAL CONTRACTORS (1968) LIMITED (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: R. KOSKIE, A. M. MINSKY AND MICHAEL REILLY FOR THE COMPLAINANT; B. W. BINNING AND G. A. BECIGNEUL FOR THE RESPONDENT COMPANY AND BRAMALEA GENERAL CONTRACTING (PEEL) LIMITED; CHARLES GUAGLIANO AND THOMAS FENWICK FOR THE RESPONDENT UNION.

DECISION OF THE BOARD: JUNE 30, 1971.

. . .

2. THIS IS A COMPLAINT MADE UNDER SECTION 66 OF THE LABOUR RELATIONS ACT.
3. THE COMPLAINANT IS REQUESTING THAT THE BOARD MAKE AN INTERIM ORDER WITH RESPECT TO AN ASSIGNMENT OF WORK WHICH IS IN DISPUTE BETWEEN ITSELF AND THE RESPONDENT TRADE UNION.
4. BASED ON THE EVIDENCE ADDUCED AT THE CONSULTATION, THE BOARD FINDS THAT THE RESPONDENT COMPANY IS THE EMPLOYER OF THE EMPLOYEES WHO ARE ENGAGED IN THE PERFORMANCE OF THE WORK IN DISPUTE.
5. BASED ON THE EVIDENCE, THE BOARD IS SATISFIED THAT A STRIKE IS IMMINENT BY REASON OF THE ASSIGNMENT OF WORK WHICH IS THE SUBJECT MATTER OF THE DISPUTE.
6. HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES, THE MAJORITY OF THE BOARD (E. BOYER DISSENTING) DEEMS IT ADVISABLE IN ALL THE CIRCUMSTANCES TO MAKE THE INTERIM ORDER SET OUT BELOW:

THE RESPONDENT JOHN E. SMITH & SON LATH, PLASTER & ACOUSTICAL CONTRACTORS (1968) LIMITED SHALL ASSIGN THE WORK INVOLVED IN THE ERECTION OF TUBULAR METAL SCAFFOLDING EXTENDING TO A HEIGHT IN EXCESS OF 14 FEET, WHICH SCAFFOLDING IS BEING USED ON THE CANADA CENTRE FOR INLAND WATERS - PHASE II CONSTRUCTION PROJECT AT BURLINGTON TO EMPLOYEES WHO ARE REPRESENTED BY THE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837.

THIS ORDER SHALL BECOME EFFECTIVE FORTHWITH
AND SHALL REMAIN IN EFFECT UNTIL SUCH TIME
AS THE BOARD ISSUES A FURTHER DIRECTION.

7. BOARD MEMBER E. BOYER WOULD HAVE MADE AN INTERIM ORDER ASSIGNING THE SAID WORK IN DISPUTE TO A COMPOSITE CREW COMPOSED OF LABOURERS AND ONE CARPENTER.

8. THE COMPLAINANT IS ALSO REQUESTING THAT THE BOARD ISSUE A DIRECTION THAT THE RESPONDENT TRADE UNION AND ITS OFFICERS AND OFFICIALS OR AGENTS CEASE AND DESIST FROM DOING ANYTHING INTENDED OR LIKELY TO INTERFERE WITH THE TERMS OF THE ABOVE INTERIM ORDER.

9. THE REPRESENTATIVE OF THE RESPONDENT UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 18 GAVE AN UNDERTAKING TO THE BOARD THAT THE SAID TRADE UNION WOULD COMPLY WITH THE TERMS OF THE INTERIM ORDER PENDING THE BOARD MAKING A DIRECTION ON THE MERITS OF THE WORK ASSIGNMENT DISPUTE.

10. HAVING REGARD TO THE UNDERTAKING OF THE REPRESENTATIVE OF THE RESPONDENT TRADE UNION, THE REQUEST OF THE COMPLAINANT FOR A CEASE AND DESIST ORDER IS ADJOURNED SINE DIE ON THE UNDERSTANDING THAT SHOULD THERE BE ANY BREACH OF THE ABOVE UNDERTAKING THE MATTER WILL BE LISTED FORTHWITH FOR HEARING WITH RESPECT TO THE REQUEST FOR A CEASE AND DESIST DIRECTION.

358-71-R: KURT GAYLE, OSBORNE BEST, CHRISTIPHIN ROLLINS, GLADYS PALMER, COLSTONE LOVELL (APPLICANTS) v. SERVICE EMPLOYEES' UNION, LOCAL 204 (RESPONDENT) v. TORONTO GENERAL HOSPITAL (INTERVENER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: TERRANCE O'CONNOR AND MARVIN MORTEN FOR THE APPLICANTS; B. A. DUNN FOR THE RESPONDENT; L. R. MCCLOSKEY AND W. J. WHITTAKER, Q.C. FOR THE INTERVENER.

DECISION OF THE BOARD: JULY 5, 1971.

1. IN ITS DECISION OF MAY 21, 1971, THE BOARD APPOINTED AN EXAMINER TO INQUIRE INTO THE LISTS FILED BY THE INTERVENER. AT THE COMMENCEMENT OF THE CONTINUATION OF THE HEARING IN THIS MATTER THE RESPONDENT ADVISED THE BOARD THAT IT WAS SATISFIED WITH THE LISTS AS FILED BY THE INTERVENER. A FORMAL REPORT OF THE EXAMINER THEREFORE BECAME UNNECESSARY.

2. THIS IS AN APPLICATION UNDER SECTION 43 SUBSECTION (2) OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT FOR WHICH IT IS THE BARGAINING AGENT.

3. IN SUPPORT OF THE APPLICATION THE APPLICANTS FILED A SERIES OF DOCUMENTS PURPORTING TO BE SIGNED BY EMPLOYEES OF TORONTO GENERAL HOSPITAL INDICATING THAT THE SIGNATORIES NO LONGER WISH TO BE REPRESENTED BY SERVICE EMPLOYEES' UNION, LOCAL 204, THE RESPONDENT HEREIN.

4. THE RESPONDENT, IN OPPOSING THE APPLICATION, MADE THE FOLLOWING ALLEGATIONS:

"1. THE BOARD OUGHT NOT TO ENTERTAIN THE APPLICATION AS:

- (A) THE EMPLOYEES IN THE BARGAINING UNIT HAVE NOT VOLUNTARILY SIGNED THE APPLICANT'S PETITION WITHIN THE MEANING OF SECTION 43(3) OF THE LABOUR RELATIONS ACT;
- (B) THE APPLICANTS HAVE NOT MADE OUT A PRIMA FACIE CASE WITHIN RULE 46(1);
- (C) THE CONDUCT OF THE APPLICANTS HAS BEEN IRREGULAR AND IMPROPER WITHIN THE MEANING OF RULE 47(1).

2. THE RESPONDENT SUBMITS THAT THE APPLICATION BE DISMISSED FOR THE REASON THAT LESS THAN 50 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT HAVE NOT SIGNIFIED THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT."

5. IN OUR OPINION, (B) AND (C) ARE WITHOUT MERIT IN THE CIRCUMSTANCES OF THIS CASE. IN ANY EVENT, THE MAIN BRUNT OF THE RESPONDENT'S ATTACK UPON THE PETITIONS WAS BASED UPON THE ALLEGATIONS CONTAINED IN PARAGRAPH 1(A) SET OUT ABOVE.

6. IN SUPPORT OF ITS CONTENTION THAT THE EMPLOYEES CONCERNED HAVE NOT VOLUNTARILY SIGNIFIED THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT, THE RESPONDENT CITED A NUMBER OF STATEMENTS PUBLISHED IN A NEWSLETTER ENTITLED "SPEAK UP" ISSUED IN THE INTERESTS OF THE APPLICANTS IN THIS MATTER.

7. THE RESPONDENT ALSO DISTRIBUTED WRITTEN MATERIAL TO EMPLOYEES IN WHICH IT SET OUT ITS POSITION ON REPRESENTATION, ITS OPINION OF SPEAK UP AND ITS REPLIES TO SOME OF THE ATTACKS MADE UPON IT IN THAT PUBLICATION.

8. THE RESPONDENT CONTENDED THAT THE STATEMENTS PUBLISHED IN SPEAK UP, WHICH IT SET OUT IN ITS PARTICULARS, WERE SO FALSE, MIS-LEADING AND LIBELLOUS AS TO MAKE IT IMPOSSIBLE FOR THE EMPLOYEES CONCERNED TO VOLUNTARILY SIGN THE PETITIONS FOR TERMINATION.

9. THE QUESTION AS TO WHETHER THE STATEMENTS OR SOME OF THEM CONSTITUTE LIBEL IS PRESENTLY BEFORE THE COURTS AND WE MAKE NO FINDING OR COMMENT ON THAT ISSUE. IN THE PRESENT CIRCUMSTANCES THE QUESTION TO WHICH THE BOARD MUST DIRECT ITS ATTENTION UNDER SECTION 43 OF THE ACT IS WHETHER THE STATEMENTS PUBLISHED IN SPEAK UP WERE SUCH AS TO COERCE OR COMPEL REASONABLE EMPLOYEES TO SIGN THE PETITION SO THAT THEIR ACT WAS NOT A VOLUNTARILY ONE. WE WISH TO MAKE IT ABUNDANTLY CLEAR THAT WE ARE NOT PRIMARILY CONCERNED WITH DETERMINING WHETHER ANY OR ALL OF THE STATEMENTS ARE TRUE OR FALSE, BUT RATHER, TO REPEAT, SOLELY WHETHER THEY ARE SUCH AS TO HAVE COMPELLED OR COERCED A REASONABLE EMPLOYEE BY THREAT OR PROMISE, TO DO THAT WHICH HE WOULD NOT OTHERWISE HAVE DONE.

10. IN OUR OPINION, THE EMPLOYEES CONCERNED HAD TIME AND OPPORTUNITY TO CONSIDER THE STATEMENTS MADE BY BOTH THE APPLICANTS AND THE RESPONDENT AND OF WEIGHING THE SAME BEFORE SIGNING THE PETITION. THE HEADING ON THE PETITION LEAVES NO DOUBT AS TO ITS PURPOSE. ON THE BASIS OF ALL OF THE EVIDENCE THE BOARD IS SATISFIED THAT THE STATEMENTS UNDERLYING THE RESPONDENT'S CHARGES WERE NOT COERCIVE AND THAT THE PETITIONS WERE VOLUNTARILY SIGNED.

11. THE BOARD FINDS ON ALL THE EVIDENCE THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF TORONTO GENERAL HOSPITAL IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, HAD VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION ON MAY 10, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING THE NUMBER OF PERSONS WHO HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION UNDER SECTION 43(3) OF THE SAID ACT.

12. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF TORONTO GENERAL HOSPITAL. ...

. . .

14. THE MATTER IS REFERRED TO THE REGISTRAR.

499-71-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF U.S.A. AND CANADA, LOCAL 905 (APPLICANT) v. GOODTIME TOYS INC. (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: J. B. WATERMAN AND VINCENT KNAP FOR THE APPLICANT, E. ROVET AND M. ZIGELSTEIN FOR THE RESPONDENT.

DECISION OF THE BOARD: JULY 8, 1971.

1. THIS IS AN APPLICATION UNDER SECTION 47A OF THE LABOUR RELATIONS ACT WHEREIN THE APPLICANT HAS REQUESTED THE BOARD TO DECLARE THAT THE BUSINESS CARRIED ON BY STAR DOLL MANUFACTURING Co. LIMITED HAS BEEN SOLD TO THE RESPONDENT.
2. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT THE APPLICANT HAS FAILED TO SATISFY THE BOARD THAT THERE HAS BEEN A SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 47A OF THE ACT TO THE RESPONDENT.
3. ONE OF THE OFFICERS OF THE RESPONDENT HELD A CHATTEL MORTGAGE OF CERTAIN ASSETS OWNED BY STAR DOLL MANUFACTURING Co. LIMITED. WHEN STAR DOLL MANUFACTURING Co. LIMITED DEFAULTED ON THE CHATTEL MORTGAGE, THE OFFICER OF THE RESPONDENT EXERCISED HIS RIGHTS UNDER THE CHATTEL MORTGAGE AND TOOK POSSESSION OF THE ASSETS. SUBSEQUENTLY, A RECEIVING ORDER WAS MADE AND A TRUSTEE WAS APPOINTED UNDER THE BANKRUPTCY ACT. AS OF THE DATE OF THE HEARING IN THIS MATTER, THE BANKRUPT COMPANY WAS IN THE HANDS OF THE TRUSTEE. HOWEVER, THE TRUSTEE WAS NOT CALLED BY THE APPLICANT TO TESTIFY IN THIS MATTER.
4. WE FIND THAT THE EVIDENCE ADDUCED IN THIS CASE MERELY ESTABLISHED THAT THE RESPONDENT ACQUIRED ASSETS OF STAR DOLL MANUFACTURING Co. LIMITED; HOWEVER, THE "BUSINESS" OF STAR DOLL MANUFACTURING Co. LIMITED WAS IN THE HANDS OF THE TRUSTEE AND ONLY THE TRUSTEE COULD DISPOSE OF SUCH BUSINESS. THERE WAS NO EVIDENCE THAT THERE WAS ANY DEALINGS BETWEEN THE TRUSTEE AND THE RESPONDENT. IT IS NOTED, HOWEVER, THAT THE OFFICER OF THE RESPONDENT IS ONE OF THE CREDITORS INCLUDED IN THE LIST OF CREDITORS OF STAR DOLL MANUFACTURING Co. LIMITED WHOSE CLAIMS TOTAL IN EXCESS OF \$180,000.
5. ACCORDINGLY, THE BOARD IS NOT PREPARED TO MAKE THE DECLARATION REQUESTED BY THE APPLICANT IN THIS CASE.

6. IN VIEW OF THE BOARD'S FINDING AS OUTLINED ABOVE, IT IS UNNECESSARY FOR THE BOARD TO MAKE ANY DECISION WITH RESPECT TO OTHER OUTSTANDING ISSUES.

431-71-R: SERVICE EMPLOYEES UNION, LOCAL 204 AFFILIATED WITH THE S.E.I.U. AF of L, C.I.O., C.L.C. (APPLICANT) V. ALTAMONT NURSING HOME LIMITED (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C.

DECISION OF THE BOARD: JULY 8, 1971.

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2. THE APPLICANT IN ITS APPLICATION FOR CERTIFICATION PROPOSED A BARGAINING UNIT DESCRIBED IN TERMS OF ALL EMPLOYEES OF THE RESPONDENT SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMEN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD.

3. THE RESPONDENT IS IN GENERAL AGREEMENT WITH THE UNIT PROPOSED BY THE APPLICANT BUT SEEKS THE EXCLUSION FROM THE PROPOSED BARGAINING UNIT OF REGISTERED NURSING ASSISTANTS. IT IS THE POSITION OF THE RESPONDENT THAT REGISTERED NURSING ASSISTANTS ARE PROFESSIONAL NURSING STAFF. IN SUPPORT OF ITS CONTENTION THE RESPONDENT RELIED UPON THE FACT THAT "REGISTERED NURSE" AND "REGISTERED NURSING ASSISTANT" ARE DEFINED IN SECTION 1 OF THE NURSES ACT, S.O. 1961-62.

4. IT HAS BEEN THE POLICY OF THE BOARD NOT TO INCLUDE REGISTERED NURSING ASSISTANTS WITHIN THE TERM "PROFESSIONAL NURSING STAFF" BUT RATHER TO CONFINE THAT TERM TO REGISTERED NURSES AND GRADUATE NURSES. THE FACT THAT AN OCCUPATION HAS BEEN DEFINED IN AN ACT OF THE LEGISLATURE DOES NOT IN ITSELF DETERMINE WHETHER SUCH OCCUPATION IS OR IS NOT A PROFESSIONAL OCCUPATION IN THE CONTEXT OF LABOUR RELATIONS. IT HAS BEEN THE POLICY OF THE BOARD TO INCLUDE REGISTERED NURSING ASSISTANTS IN "ALL EMPLOYEE" BARGAINING UNITS IN NURSING HOMES AND HOSPITALS FOR A VARIETY OF REASONS INCLUDING THEIR COMMUNITY OF INTEREST WITH OTHER EMPLOYEES IN AN "ALL EMPLOYEE" UNIT AND A DESIRE BY THE BOARD TO AVOID FRAGMENTATION OF BARGAINING UNITS. REFERENCE IS MADE TO THE RIVERSIDE HOSPITAL OTTAWA CASE LIMITED, OLRB M.O.R. JAN. 71 P.10.

5. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF PICKERING SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

481-71-U: JOHN DAMJANOV (COMPLAINANT) V. MR. A. GALLAGER AND MR. S. KOEHLER (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS O. HODGES AND F. W. MURRAY.

DECISION OF THE BOARD: JULY 7, 1971.

1. THIS IS A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT ALLEGES THAT HE HAS BEEN DEALT WITH CONTRARY TO THE PROVISIONS OF SECTIONS 48, 49 AND 65A OF THE ACT, THE RESPONDENT GALLAGER IS THE SUPERINTENDENT OF A COMPANY KNOWN AS D.H.I. LIMITED. THE RESPONDENT KOEHLER IS THE SECRETARY OF LOCAL UNION 1940 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA.

2. IT APPEARS FROM THE COMPLAINT AND THE REPORT OF THE FIELD OFFICER APPOINTED IN THIS MATTER THAT THE COMPLAINANT AND TWO OTHER PERSONS WERE PERMITTED TO WORK ON A BUILDING AT THE UNIVERSITY OF WATERLOO DURING A CARPENTERS' STRIKE IN THE SUMMER OF 1970. IT IS ALLEGED THAT THE CONDITIONS UNDER WHICH THEY AGREED TO WORK WERE THAT THEY WOULD RECEIVE HOURLY INCREASES WHICH WOULD BE FINALLY SETTLED UPON AT THE CONCLUSION OF THE STRIKE. DURING THE STRIKE THE COMPLAINANT AND THE OTHER TWO GRIEVORS WERE ASSESSED A DAILY FEE BY LOCAL UNION No. 1940. IT IS ALLEGED THAT THEY DID NOT RECEIVE ANY INCREASES AT THE CONCLUSION OF THE STRIKE. IT SEEMS CLEAR FROM THE ALLEGATIONS THAT THE COMPLAINANT AND THE OTHER TWO GRIEVORS ARE SEEKING TO COLLECT WAGES AND/OR DAMAGES FOR AN ALLEGED BREACH OF CONTRACT. IN OUR VIEW, THERE IS NOTHING IN SECTIONS 48 OR 49, OR FOR THAT MATTER, IN ANY OTHER SECTION OF THE LABOUR RELATIONS ACT, WHICH GIVES THE BOARD JURISDICTION TO DEAL WITH SUCH A CLAIM.

3. IT FOLLOWS, THEREFORE, THAT THE COMPLAINT DOES NOT, IN OUR OPINION, MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND, PURSUANT TO SUBSECTION 1 OF SECTION 46 OF THE BOARD'S RULES OF PROCEDURE, THE COMPLAINT IS DISMISSED.

129-70-M: KLAAS STEL (APPLICANT) V. THE NORTH YORK CIVIC EMPLOYEES UNION, Local 94, CANADIAN UNION OF PUBLIC EMPLOYEES (RESPONDENT TRADE UNION) V. THE CORPORATION OF THE BOROUGH OF NORTH YORK (RESPONDENT EMPLOYER).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: W. R. HERRIDGE, Q.C., ROBERT PECK AND THOMAS DUNNE FOR THE APPLICANT; T. E. ARMSTRONG AND A. RISELEY FOR THE RESPONDENT TRADE UNION; AND RONALD KING FOR THE RESPONDENT EMPLOYER.

DECISION OF G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBER F. W. MURRAY:
JULY 20, 1971.

1. THIS IS AN APPLICATION BY KLAAS STEL UNDER SECTION 35A(1) OF THE LABOUR RELATIONS ACT FOR AN ORDER BY THE BOARD THAT ARTICLE 32.1 AND 32.2 OF THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT TRADE UNION, HEREINAFTER REFERRED TO AS "CUPE", AND THE CORPORATION OF THE BOROUGH OF NORTH YORK, HEREINAFTER REFERRED TO AS "THE BOROUGH", MADE JUNE 22, 1970 AND EFFECTIVE FROM JANUARY 1, 1970 UNTIL DECEMBER 31, 1971, DOES NOT APPLY TO STEL AND THAT HE IS NOT REQUIRED TO CONTINUE TO BE A MEMBER OF CUPE OR TO PAY ANY DUES, FEES OR ASSESSMENTS TO THE SAID UNION.

2. SECTION 35A PROVIDES:

(1) WHERE THE BOARD IS SATISFIED THAT AN EMPLOYEE BECAUSE OF HIS RELIGIOUS CONVICTION OR BELIEF,

(A) OBJECTS TO JOINING A TRADE UNION;
OR

(B) OBJECTS TO THE PAYING OF DUES OR
OTHER ASSESSMENTS TO A TRADE UNION,

THE BOARD MAY ORDER THAT THE PROVISIONS OF A COLLECTIVE AGREEMENT OF THE TYPE MENTIONED IN CLAUSE (A) OF SUBSECTION 1 OF SECTION 35 DO NOT APPLY TO SUCH EMPLOYEE AND THAT THE EMPLOYEE IS NOT REQUIRED TO JOIN THE TRADE UNION, TO BE OR CONTINUE TO BE A MEMBER OF THE TRADE UNION, OR TO PAY ANY DUES, FEES OR ASSESSMENTS TO THE TRADE UNION, PROVIDED

THAT AMOUNTS EQUAL TO ANY INITIATION FEES, DUES OR OTHER ASSESSMENTS ARE PAID BY THE EMPLOYEE TO OR ARE REMITTED BY THE EMPLOYER TO A CHARITABLE ORGANIZATION MUTUALLY AGREED UPON BY THE EMPLOYEE AND THE TRADE UNION, BUT IF THE EMPLOYEE AND THE TRADE UNION FAIL TO SO AGREE THEN TO SUCH CHARITABLE ORGANIZATION REGISTERED AS A CHARITABLE ORGANIZATION IN CANADA UNDER PART I OF THE INCOME TAX ACT (CANADA) AS MAY BE DESIGNATED BY THE BOARD.

(2) SUBSECTION 1 APPLIES,

(A) SUBJECT TO CLAUSE B, TO EMPLOYEES IN THE EMPLOY OF AN EMPLOYER AT THE TIME A COLLECTIVE AGREEMENT CONTAINING A PROVISION OF THE KIND MENTIONED IN SUBSECTION 1 IS FIRST ENTERED INTO WITH THAT EMPLOYER AND ONLY DURING THE LIFE OF SUCH COLLECTIVE AGREEMENT; AND

(B) WHERE A COLLECTIVE AGREEMENT IN FORCE WHEN THIS SUBSECTION COMES INTO FORCE CONTAINS THE PROVISIONS MENTIONED IN SUBSECTION 1, TO EMPLOYEES IN THE EMPLOY OF THE EMPLOYER AT THE TIME THIS SECTION COMES INTO FORCE AND ONLY DURING THE LIFE OF SUCH COLLECTIVE AGREEMENT,

AND DOES NOT APPLY TO EMPLOYEES WHOSE EMPLOYMENT COMMENCES AFTER THE ENTERING INTO OF THE COLLECTIVE AGREEMENT WHEN CLAUSE A APPLIES, OR AFTER THIS SECTION COMES INTO FORCE, WHEN CLAUSE B APPLIES.

SECTION 35A WAS ENACTED BY S.O. 1970, c. 85, s. 14, WHICH CAME INTO FORCE ON FEBRUARY 15, 1971 BY PROCLAMATION. ON THAT DATE STEL WAS AN EMPLOYEE OF THE BOROUGH, WAS IN THE BARGAINING UNIT DESCRIBED IN THE ABOVE-NOTED COLLECTIVE AGREEMENT AND WAS BOUND BY ITS TERMS AND CONDITIONS. THE AGREEMENT WAS IN FORCE ON FEBRUARY 15, 1971. ARTICLE 32 OF THE AGREEMENT IS OF THE TYPE MENTIONED IN CLAUSE A OF SUBSECTION 1 OF SECTION 35 OF THE LABOUR RELATIONS ACT IN THAT IT REQUIRES MEMBERSHIP IN CUPE AS A CONDITION OF EMPLOYMENT AND REQUIRES PAYMENT OF DUES TO THE UNION. CLEARLY, THEREFORE, STEL IS AN EMPLOYEE TO WHOM SECTION 35A(1) APPLIES.

3. STEL'S APPLICATION WAS THE FIRST TO BE HEARD AND CONSIDERED BY THE BOARD UNDER SECTION 35A. WE HAVE HAD THE ADVANTAGE OF FULL AND ABLE ARGUMENT BY COUNSEL ON BEHALF OF STEL AND CUPE. COUNSEL FOR THE BOROUGH, THOUGH PRESENT, DID NOT PARTICIPATE IN THE PROCEEDINGS. BECAUSE THIS IS THE FIRST APPLICATION, AND HAVING REGARD TO THE INHERENT DIFFICULTIES OF THE SUBJECT MATTER OF THE SECTION, WE HAVE TAKEN SOME TIME TO CONSIDER THE ISSUES RAISED AND ARGUED, IN THE REALIZATION THAT THIS DECISION MAY WELL SET GUIDE-LINES FOR FUTURE APPLICATIONS UNDER THE SECTION.

4. THE EVIDENCE ESTABLISHED, AND WE SO FIND, THAT STEL, WHO IS 61, WAS BORN IN HOLLAND, WHERE HE WAS A MEMBER OF A CHURCH EQUIVALENT TO IF NOT THE SAME AS THE CHRISTIAN REFORMED CHURCH IN CANADA. HE IS MARRIED AND HAS FIVE CHILDREN. IN HOLLAND THREE OF HIS CHILDREN ATTENDED CHRISTIAN REFORM SCHOOLS IN WHICH EDUCATION WAS BASED OR FOUNDED ON THE PRINCIPLES OF THE BIBLE. HE AND HIS FAMILY EMIGRATED TO CANADA IN 1952. HE JOINED THE CHRISTIAN REFORMED CHURCH AND HAS REMAINED A MEMBER EVER SINCE. HE IS PRESENTLY A MEMBER OF THE WOODBRIDGE CONGREGATION, WHICH WAS FORMED FOUR YEARS AGO AS A RESULT OF A SPLIT FROM THE SECOND REFORMED CHURCH IN REXDALE. THE REASON FOR THE SPLIT WAS THE LATTER CONGREGATION HAD BECOME TOO LARGE. ALTHOUGH HE DOES NOT NOW HOLD OFFICE, HE WAS AN ELDER FOR THREE YEARS, HIS DUTIES BEING TO TAKE CARE OF THE CONGREGATION, MAKE HOME VISITS AND "GENERALLY SEE TO IT THAT THE DOCTRINE OF THE CHURCH WAS KEPT ACCORDING TO THE WORD OF GOD".

5. IN CANADA, STEL'S CHILDREN WERE EDUCATED IN THE PUBLIC SCHOOLS BUT ONLY BECAUSE THERE WERE AT THAT TIME NO CHRISTIAN REFORM SCHOOLS TO ATTEND. SUCH SCHOOLS HAVE NOW BEEN ESTABLISHED AND STEL MAKES A SUBSTANTIAL FINANCIAL CONTRIBUTION EACH YEAR TO THEIR SUPPORT, DESPITE THE FACT THAT HE DOES NOT NOW HAVE CHILDREN OF SCHOOL AGE. THESE SCHOOLS ARE NOT SUPPORTED BY TAXES. STEL ALSO MAKES SUBSTANTIAL CONTRIBUTIONS TO HIS CHURCH WHICH HE NORMALLY ATTENDS TWICE EACH SUNDAY. THE TOTAL OF HIS YEARLY CONTRIBUTIONS TO CHURCH AND SCHOOL IS IN EXCESS OF \$600.

6. BETWEEN 1952 AND 1956 STEL HAD A NUMBER OF JOBS, BUT NO STEADY WORK. AS HE PUTS IT "WITH A FAMILY OF SEVEN THIS WAS PRETTY HARD". FINALLY HE WAS OFFERED A POSITION WITH THE BOROUGH IN HIS LINE OF WORK, THAT IS, GARDENING. HE SAW IT AS AN OPENING FOR A STEADY JOB SO HE TOOK IT. IT WAS BROUGHT OUT IN CROSS-EXAMINATION THAT HE WAS NOT MADE AWARE BY THE TOWNSHIP (NOW THE BOROUGH) WHEN HE SOUGHT EMPLOYMENT THAT HE WAS REQUIRED TO BE A MEMBER OF THE UNION AS A CONDITION OF EMPLOYMENT, ALTHOUGH HE KNEW IT WAS A UNION JOB. HE WAS MADE AWARE OF THE CONDITIONS OF EMPLOYMENT BY THE JOB STEWARD WHO CAME TO HIM AND INVITED HIM DOWN TO THE UNION TO BE SWORN IN. STEL ASKED HIM IF HE HAD TO JOIN AND THE STEWARD SAID YES, OTHERWISE THERE WOULD BE NO JOB. STEL SAID, "SO THERE IS NO OTHER ALTERNATIVE" AND THE STEWARD AGREED. STEL, TO USE HIS OWN WORDS, "WAS NOT HAPPY ABOUT HAVING TO JOIN" BUT HE FELT HE HAD NO ALTERNATIVE, IN VIEW OF THE FACT THAT HE HAD A STEADY JOB IN

HIS OWN LINE OF WORK. SO HE COMPROMISED HIS POSITION AND BECAME A MEMBER OF THE UNION, WHICH AT THAT TIME WAS A LOCAL OF THE NATIONAL UNION OF PUBLIC EMPLOYEES (HEREINAFTER REFERRED TO AS "NUPE"). HE STATED THIS WAS IN 1957. HE COMMENCED WORKING FOR THE TOWNSHIP ON NOVEMBER 7, 1956.

7. IN THE SUBSEQUENT YEARS HE ATTENDED MEETINGS OF THE UNION WHEN THE RENEWAL OF THE COLLECTIVE AGREEMENT WAS UP FOR DISCUSSION AND ON ONE OCCASION HE INVOKED THE GRIEVANCE PROCEDURE UNDER THE AGREEMENT. HE ALSO ATTENDED ONE CHRISTMAS PARTY OF THE UNION, OF WHICH MORE LATER. HE DISCUSSED HIS POSITION VIS-A-VIS THE UNION WITH ITS PRESIDENT. HIS EVIDENCE WAS THAT THEY WORKED IN THE SAME DEPARTMENT AND MET EVERY DAY, TALKED ABOUT IT, AND THE PRESIDENT KNEW STEL'S STANDPOINT THAT HE OBJECTED TO JOINING THE UNION. WHEN ASKED IN CROSS-EXAMINATION WHETHER HE HAD REGISTERED HIS OBJECTION TO THE PRACTICES OF THE UNION, HIS REPLY WAS THAT "HE HAD ALL ALONG MADE THIS CLEAR TO THE PRESIDENT". HE ALSO DISCUSSED THE NEW LAW WITH THE PRESIDENT. THIS EVIDENCE WAS NOT CHALLENGED IN ANY WAY. STEL TESTIFIED FURTHER THAT HE DID NOT WANT TO REMAIN IN THE UNION AND ONCE SECTION 35A BECAME LAW HE COMMENCED THE PRESENT APPLICATION.

8. IT IS CONVENIENT AT THIS POINT TO DEAL WITH THE ARGUMENT THAT THE PRESENT APPLICATION WAS PROMPTED BY ANOTHER ORGANIZATION AND THAT IT IS NOT REALLY STEL WHO IS OBJECTING, AS IS REQUIRED BY THE SECTION. IN SUPPORT OF HIS ARGUMENT COUNSEL REFERRED TO THE EVIDENCE THAT STEL RECEIVED A PUBLICATION FROM THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (HEREINAFTER REFERRED TO AS "THE C.L.A.C.") DATED FEBRUARY 2, 1971, WHICH ADVISED OF THE AMENDMENTS TO THE LABOUR RELATIONS ACT, INCLUDING THE "CHARITY CLAUSE", SECTION 35A. THE PUBLICATION IN QUESTION, THE GUIDE, INVITED RECIPIENTS TO MAKE APPLICATION TO THE BOARD AND OFFERED FINANCIAL ASSISTANCE AND COUNSEL. THE EXECUTIVE SECRETARY OF THE C.L.A.C. IS A MR. VANDEZANDE, WHOM STEL HAS KNOWN FOR TEN YEARS. MR. VANDEZANDE WAS PRESENT AT THE COUNSEL TABLE DURING THE HEARINGS IN THIS CASE. STEL ADMITTED THAT THE OFFER OF FINANCIAL ASSISTANCE AND COUNSEL WAS A FACTOR IN HIS MAKING THE APPLICATION AND THAT HE AVAILED HIMSELF OF THE OFFER OF THE C.L.A.C. HE ASKED FOR ADVICE AND RECEIVED IT FROM VANDEZANDE AND OTHER MEMBERS OF THE C.L.A.C. HOWEVER, STEL TESTIFIED THAT THE INSTRUCTIONS TO THE SOLICITOR CAME FROM HIMSELF WITH THE HELP OF THE C.L.A.C. HE READ OVER THE COMPLETED APPLICATION, AGREED WITH IT AND SIGNED IT. HE FURTHER TESTIFIED, IN CROSS-EXAMINATION, THAT IT WAS NOT BECAUSE OF WHAT HE HAD READ IN THE GUIDE THAT HE MADE THE APPLICATION. HE WOULD HAVE MADE IT IN ANY EVENT BECAUSE HE FELT IT WAS HIS DUTY TO ACT. HE NOT ONLY READ ABOUT THE NEW LEGISLATION IN THE GUIDE, BUT ALSO IN THE TORONTO STAR. FOLLOWING THAT, HE MADE UP HIS MIND. AS HE PUT IT TO HIS COUNSEL, "NOW THAT THERE WAS A WAY OUT, IT WAS MY RESPONSIBILITY TO TAKE THE OPPORTUNITY." HE APPROACHED THE C.L.A.C., THEY DID NOT APPROACH HIM.

9. THERE IS NO DOUBT IN OUR MINDS THAT KLAAS STEL IS A GOD-FEARING, DEEPLY RELIGIOUS MAN. HE GAVE HIS TESTIMONY IN A CALM MANNER, DESPITE A VIGOROUS CROSS-EXAMINATION, A GOOD DEAL OF WHICH WAS, AS WE SHALL SEE, ON COMPLEX AND DIFFICULT SUBJECT MATTERS. IT MUST ALSO BE REMEMBERED THAT HE WAS NOT SPEAKING IN HIS MOTHER TONGUE. NEVERTHELESS, HE WAS RELATIVELY ARTICULATE AND COMPLETELY UNSHAKEN. HE WAS A CANDID WITNESS AND WE HAVE NO GROUNDS WHATSOEVER FOR DISBELIEVING ANY OF HIS TESTIMONY. WE ARE SATISFIED, THEREFORE, THAT THE PRESENT APPLICATION IS STEL'S, THAT IT WAS HE WHO DECIDED TO MAKE IT, AND THAT ALTHOUGH HE RECEIVED ASSISTANCE AND ADVICE IN HOW TO CARRY IT OUT, HE WOULD HAVE LAUNCHED THESE PROCEEDINGS EVEN IF THAT ASSISTANCE HAD NOT BEEN AVAILABLE TO HIM.

10. WE TURN NOW TO EXAMINE AND CONSIDER SECTION 35A(1) IN THE LIGHT OF THE EVIDENCE AND THE ARGUMENTS ADDRESSED TO US WITH RESPECT THERETO. FOR PRESENT PURPOSES, IT IS SUFFICIENT TO SET OUT PART ONLY OF SECTION 35A(1) AS FOLLOWS:

(1) WHERE THE BOARD IS SATISFIED THAT AN EMPLOYEE BECAUSE OF HIS RELIGIOUS CONVICTIONS OR BELIEF,

(A) OBJECTS TO JOINING A TRADE UNION;
OR

(B) OBJECTS TO THE PAYING OF DUES OR
OTHER ASSESSMENTS TO A TRADE UNION,

THE BOARD MAY ORDER THAT THE PROVISIONS OF A COLLECTIVE AGREEMENT OF THE TYPE MENTIONED IN CLAUSE (A) OF SUBSECTION 1 OF SECTION 35 DO NOT APPLY TO SUCH EMPLOYEE AND THAT THE EMPLOYEE IS NOT REQUIRED TO JOIN THE TRADE UNION, TO BE OR CONTINUE TO BE A MEMBER OF THE TRADE UNION, OR TO PAY ANY DUES, FEES OR ASSESSMENTS TO THE TRADE UNION, PROVIDED...

THIS APPLICATION IS BASED ON BOTH CLAUSE (A), THAT IS, JOINING A TRADE UNION, AND CLAUSE (B) DEALING WITH DUES. FOR PURPOSES OF SIMPLIFICATION WE PROPOSE TO DEAL WITH THE CASE ON THE BASIS OF CLAUSE (A). IN SO DOING, HOWEVER, WE WISH TO MAKE IT CLEAR THAT EVIDENCE RELATING TO OBJECTIONS TO JOINING A UNION INCLUDES OBJECTIONS TO PAYING DUES.

11. IN THIS CASE, THEREFORE, BEFORE MAKING THE ORDER REQUESTED, THE BOARD MUST BE SATISFIED THAT AN EMPLOYEE OBJECTS TO JOINING A TRADE UNION BECAUSE OF HIS RELIGIOUS CONVICTION OR BELIEF. WE HAVE

ALREADY FOUND THAT STEL IS AN EMPLOYEE TO WHOM SECTION 35A APPLIES. THE FIRST QUESTION THAT ARISES IS DOES STEL OBJECT TO JOINING A TRADE UNION? COUNSEL POINTED OUT, AND COUNSEL FOR CUPE CONCEDED, THAT THE WORD IS "OBJECTS" NOT "REFUSES". THUS THE FACT THAT AN EMPLOYEE, IN ORDER TO OBTAIN WORK OR TO CONTINUE TO WORK, HAS BEEN COMPELLED TO JOIN A TRADE UNION DOES NOT OF ITSELF DEPRIVE HIM OF RELIEF UNDER THE SECTION. IN FACT, THE SECTION EXPRESSLY PROVIDES FOR SUCH A SITUATION IN THE CASE OF THE WORDS IN SUBSECTION 1 OF "CONTINUE TO BE A MEMBER OF THE TRADE UNION". FURTHER, IT IS IMPLICIT FROM THE WORDING OF CLAUSE (B) OF SUBSECTION 2. THIS CLAUSE ENVISAGES CASES OF EMPLOYEES COVERED BY A UNION SECURITY CLAUSE IN A COLLECTIVE AGREEMENT AT THE TIME THE SECTION CAME INTO FORCE. IF SUCH EMPLOYEES HAVE CONTINUED TO BE EMPLOYEES, THEY COULD ONLY HAVE REMAINED AS EMPLOYEES BY COMPLYING WITH THE UNION SECURITY PROVISIONS. THUS IT IS NOT NECESSARY FOR AN APPLICANT TO BECOME, AS STEL'S COUNSEL PUT IT, AN "ECONOMIC MARTYR" BEFORE BEING ENTITLED TO AN ORDER UNDER THE SECTION.

12. DOES STEL OBJECT TO JOINING A TRADE UNION? COUNSEL FOR THE APPLICANT REFERRED US TO WEBSTER'S SEVENTH NEW COLLEGIATE DICTIONARY, WHERE "OBJECT" IS DEFINED AS 1: TO OPPOSE SOMETHING; 2: TO FEEL DIS- TASTE FOR SOMETHING; DISAPPROVE. IT IS CLEAR THAT STEL WAS OPPOSED TO JOINING NUPE IN 1957 BUT JOINED BECAUSE HE FELT HE HAD NO ALTERNATIVE. SUBSEQUENTLY, HE MADE HIS OBJECTIONS KNOWN TO THE PRESIDENT, WITH WHOM HE WAS IN DAILY CONTACT. ALL ALONG, STEL HAD MADE IT CLEAR TO THE PRE- SIDENT THAT HE OBJECTED TO THE PRACTICES OF THE UNION AND HE DISCUSSED THE NEW LAW WITH HIM. WHEN SECTION 35A CAME INTO FORCE, HE FELT THAT IT WAS HIS DUTY TO ACT - HIS RESPONSIBILITY TO TAKE THE OPPORTUNITY. IT WAS ARGUED THAT STEL, IN MAKING THE APPLICATION, WAS REALLY EXPRESS- ING A PREFERENCE AND NOT AN OBJECTION AND THAT TO BRING ONESELF WITHIN THE SECTION IT WAS NOT ENOUGH TO SAY, "IF THERE IS SOME OTHER WAY, I WOULD NOT BELONG." WHILE THIS MIGHT WELL BE TRUE, WE ARE SATISFIED ON THE EVIDENCE THAT STEL'S CONDUCT GOES BEYOND EXPRESSING A PREFERENCE. FROM THE OUTSET HE WAS OPPOSED TO JOINING THE UNION AND THAT OPPOSITION HAS CONTINUED TO THE PRESENT TIME. WE ARE THEREFORE SATISFIED THAT STEL OBJECTS TO JOINING CUPE.

13. WE ARE ALSO SATISFIED THAT STEL WOULD HAVE NO OBJECTION TO JOINING AT LEAST ONE OTHER UNION, NAMELY, THE C.L.A.C. IT WAS THE SUBMISSION OF COUNSEL FOR THE APPLICANT THAT ALL HE WAS REQUIRED TO ESTABLISH WAS THAT STEL OBJECTED TO JOINING A TRADE UNION AND THAT THE OBJECTION NEED NOT BE AGAINST JOINING ALL TRADE UNIONS. WHILE NOT MAKING IT ONE OF HIS PRINCIPAL ARGUMENTS, COUNSEL FOR THE RE- SPONDENT WAS NOT PREPARED TO ABANDON THE ARGUMENT THAT "A" IN THE PHRASE "A TRADE UNION" APPEARING IN CLAUSES (A) AND (B) OF SECTION 35A(1) MEANS "ANY". COUNSEL FOR THE APPLICANT SUBMITTED THAT WE SHOULD EXAMINE A PROPOSED AMENDMENT TO THE SECTION MADE IN THE LEGIS- LATURE, WHICH WAS DEFEATED, AS AN AID IN INTERPRETING THE SECTION.

HE CONCEDED THE BOARD WAS NOT ENTITLED TO LOOK AT THE REPORT OF DEBATES IN THE LEGISLATURE. HOWEVER, COUNSEL DID NOT REFER US TO ANY AUTHORITY FOR HIS PROPOSITION AND WE HAVE FOUND NONE. WHILE THERE IS LIMITED AUTHORITY, PERHAPS, FOR CONSIDERING REPORTS OF COMMISSIONS OR COMMITTEES WHICH RECOMMENDED CHANGES, SEE LETANG V. COOPER [1964] 2 A11 E.R. 929; WALTER ET AL. V. ATTORNEY-GENERAL OF ALBERTA (1966) 58 W.W.R. 385, THESE DECISIONS DO NOT SUPPORT THE POSITION OF COUNSEL FOR THE APPLICANT AND WE HAVE THEREFORE NOT EXAMINED THE PROPOSED AMENDMENT.

14. COUNSEL ALSO RELIED ON REX V. GLENFIELD [1935] 1 D.L.R. 37. IN THAT CASE THE ALBERTA COURT OF APPEAL WAS CALLED ON TO CONSTRUE S. 641 OF THE CRIMINAL CODE AS ENACTED 1930 (CAN.), c. 11, s. 19. IT PROVIDED BY S-S 1 THAT:

IF A CONSTABLE OR OTHER PEACE OFFICER...
REPORTS IN WRITING TO THE MAYOR...OR TO
THE POLICE...MAGISTRATE...THAT THERE ARE
GOOD GROUNDS FOR BELIEVING, AND THAT HE
DOES BELIEVE, THAT ANY HOUSE...IS KEPT
OR USED AS A DISORDERLY HOUSE AS DEFINED
BY SECTION TWO HUNDRED AND TWENTY-NINE...
SUCH...POLICE...MAGISTRATE...MAY, BY ORDER
IN WRITING, AUTHORIZE THE CONSTABLE OR
OTHER PEACE OFFICER TO ENTER AND SEARCH
ANY SUCH HOUSE...

AT PAGE 41 OF THE REPORT, HARVEY, C.J.A., WHO DELIVERED THE JUDGMENT OF THE COURT, SAID:

IN THESE CASES THE ORDER FOR SEARCH
WAS ISSUED TO TWO CONSTABLES IN THE REPORT
IN WRITING OF THE CHIEF OF THE CITY POLICE
AND MR. SINCLAIR CONTENDS THAT THERE IS NOT
A COMPLIANCE WITH S-S. 1. MR. GRAY DOES NOT
DISPUTE THIS AND I THINK QUITE PROPERLY. THE
PROVISION IS NOT THAT ON THE REPORT OF A CON-
STABLE OR PEACE OFFICER THE MAGISTRATE MAY
AUTHORIZE A CONSTABLE OR PEACE OFFICER, BUT
THE CONSTABLE OR PEACE OFFICER. IT SEEMS
CLEAR THAT THE ORDER TO SEARCH MUST ISSUE
TO THE CONSTABLE OR PEACE OFFICER WHO RE-
PORTS TO THE MAGISTRATE WHO, HOWEVER, IS
AUTHORIZED TO EMPLOY OTHER CONSTABLES TO
ASSIST HIM.

15. IN THE PRESENT CASE COUNSEL SEEKS TO DRAW AN ANALOGY TO

SECTION 35A BY REFERRING TO THE WORDS "A TRADE UNION" IN CLAUSES (A) AND (B) OF SUBSECTION 1 AND TO THE WORDS "THE TRADE UNION" (EMPHASIS ADDED) WHICH APPEAR SEVERAL TIMES IN THE TEXT OF THE REMAINDER OF THAT SUBSECTION. THE ARGUMENT, AS WE UNDERSTAND IT, IS THAT JUST AS THE WORDS "THE CONSTABLE" IN SECTION 64(1) (AS IT THEN WAS) OF THE CRIMINAL CODE WHO IS AUTHORIZED TO CONDUCT THE SEARCH MUST BE THE CONSTABLE WHO REPORTS TO THE MAGISTRATE, SO "THE TRADE UNION" IN SECTION 35A(1) WHICH IS THE PARTY TO THE COLLECTIVE AGREEMENT REFERRED TO IN THAT SUBSECTION MUST BE THE TRADE UNION TO WHICH THE EMPLOYEE MUST OBJECT TO JOINING. IN OTHER WORDS, "A TRADE UNION" MEANS THE ONE THAT IS PARTY TO THE COLLECTIVE AGREEMENT. WHILE THERE IS A CERTAIN SUPERFICIAL ATTRACTIVENESS TO THIS ARGUMENT, WE ARE NOT INCLINED TO SAY THAT THE GLENFIELD CASE COMPELS US TO REACH THAT CONCLUSION. AS HARVEY C.J.A. POINTS OUT, THE SECTION COULD HAVE READ "A CONSTABLE" INSTEAD OF "THE CONSTABLE" (EMPHASIS ADDED). ON THE OTHER HAND, IT IS OUR VIEW THAT IN SECTION 35A(1) "THE TRADE UNION" HAD TO BE USED AFTER CLAUSES (A) AND (B) IN ORDER TO IDENTIFY THE UNION WHICH IS PARTY TO THE COLLECTIVE AGREEMENT. THUS THE USE OF THE DEFINITE ARTICLE BEFORE "TRADE UNION" DOES NOT NECESSARILY MAKE IT SYNONYMOUS WITH "A TRADE UNION" IN CLAUSES (A) AND (B).

16. WHAT, THEN, DO THE WORDS "A TRADE UNION" MEAN? IN THE SHORTER OXFORD ENGLISH DICTIONARY "A" IS DEFINED AS AN INDEFINITE ARTICLE MEANING "ONE, SOME OR ANY". "A" HAS ALSO BEEN JUDICIALLY INTERPRETED IN THE PARTICULAR CONTEXT OF A STATUTE TO MEAN EITHER "THE" OR "ANY". SEE, FOR EXAMPLE, IN RE BIRD, EX PARTE HILL, 23 CH. D. 695 WHERE "A" WAS HELD TO MEAN "THE" AND UNITED STEEL WORKERS OF AMERICA V. LABOUR RELATIONS BOARD [1953] 4 D.L.R. 563, WHERE "A" WAS CONSTRUED AS MEANING "ANY". IT IS OUR OPINION THAT THE WORDS IN QUESTION, "A TRADE UNION" ARE OPEN TO THE INTERPRETATION AS CONTENDED FOR BY THE APPLICANT, THAT IS, AS MEANING ONE TRADE UNION. IF THAT BE THE CASE, THEN THE WORDS WOULD BE SYNONYMOUS WITH "THE TRADE UNION" IN THE LATTER PART OF SUBSECTION 1 OF SECTION 35A BECAUSE IT WOULD MAKE NO SENSE TO ORDER EXEMPTION FOR AN EMPLOYEE OBJECTING TO JOINING TRADE UNION A, BUT NOT OBJECTING TO JOINING THE TRADE UNION WHICH IS PARTY TO THE COLLECTIVE AGREEMENT BINDING ON THE EMPLOYEE. IN SUPPORT OF THIS CONSTRUCTION IS THE FACT THAT THE DEFINITE ARTICLE "THE" COULD NOT MEANINGFULLY HAVE BEEN USED BEFORE "TRADE UNION" IN CLAUSES (A) AND (B) AS INDICATING A SINGLE UNION. IF "THE" HAD BEEN USED INSTEAD OF "A", "THE TRADE UNION" AT THAT PLACE IN SUBSECTION 1 WOULD HAVE BEEN LEFT HANGING IN THE AIR. ON THE OTHER HAND, IF THE LEGISLATURE HAD INTENDED THAT THE OBJECTION MUST BE TO JOINING ALL TRADE UNIONS, THEN IT WOULD HAVE BEEN A SIMPLE MATTER TO HAVE USED "ALL" OR "ANY", KEEPING IN MIND THE FACT THAT IT COULD NOT USE "THE".

17. SECTION 35A, IN THE LIMITED CIRCUMSTANCES SET OUT IN SUBSECTION 2, APPEARS TO US TO BE DESIGNED TO GIVE JOB SECURITY TO THOSE EMPLOYEES WHOSE RELIGIOUS CONVICTIONS OR BELIEFS COME INTO CONFLICT WITH THE UNION SECURITY PROVISIONS OF A COLLECTIVE AGREEMENT. TO CONSTRUE THE SECTION TO MEAN THAT JOB SECURITY IS ONLY OPEN TO EMPLOYEES WHO OBJECT TO JOINING ALL TRADE UNIONS BECAUSE OF THEIR RELIGIOUS CONVICTIONS OR BELIEFS AND NOT TO AN EMPLOYEE WHO OBJECTS, ON THE SAME GROUNDS, TO JOINING A PARTICULAR TRADE UNION WOULD NOT APPEAR TO BE IN ACCORD WITH "SUCH FAIR, LARGE AND LIBERAL CONSTRUCTION AND INTERPRETATION" AS THOSE WORDS ARE USED IN SECTION 10 OF THE INTERPRETATION ACT. PARTICULARLY IS THIS SO WHEN, AS WE FOUND ABOVE, THE SECTION IS OPEN TO THE CONSTRUCTION CONTENDED FOR BY THE APPLICANT AND, FURTHER, WHEN THERE IS NOTHING EITHER IN THE SECTION ITSELF OR, WHEN VIEWED IN RELATION TO OTHER SECTIONS OF THE ACT, WHICH WOULD COMPEL US TO THE OTHER POINT OF VIEW. ACCORDINGLY, WE ARE SATISFIED THAT STEL'S OBJECTION TO JOINING CUPE BRINGS HIM WITHIN THE WORDS IN CLAUSE (A) OF SUBSECTION 1 OF SECTION 35, EVEN THOUGH HE WOULD HAVE NO OBJECTION TO JOINING AT LEAST ONE OTHER TRADE UNION, NAMELY THE C.L.A.C.

18. WE TURN NOW TO CONSIDER THE REASONS WHY STEL OBJECTS TO JOINING CUPE. IS THAT OBJECTION "BECAUSE OF HIS RELIGIOUS CONVICTION OR BELIEF"? PARAGRAPH 5 OF AN APPLICATION FILED UNDER SECTION 35A [FORM 28A BOARD'S RULES OF PROCEDURE] REQUIRES AN APPLICANT TO STATE AS CONCISELY AS POSSIBLE THE RELIGIOUS CONVICTION OR BELIEF RELIED ON IN SUPPORT OF THE REQUEST FOR AN EXEMPTION. IN COMPLIANCE THEREWITH, STEL'S APPLICATION READ AS FOLLOWS:

MY CHRISTIAN CONVICTION AND BELIEF DOES NOT PERMIT ME AS A MATTER OF CONSCIENCE TO JOIN OR IN ANY WAY TO FINANCIALLY SUPPORT THE NORTH YORK CIVIC EMPLOYEES UNION, LOCAL 94, CANADIAN UNION OF PUBLIC EMPLOYEES, ON THE FOLLOWING GROUNDS:

- (1) I BELIEVE THAT THE WHOLE OF MAN'S LIFE, INCLUDING HIS HOURS OF LABOUR, MUST EXPRESS HIS LOVE OF GOD AND HIS NEIGHBOR IN ACCORDANCE WITH THE PRINCIPLES OF THE BIBLE, WHICH PRINCIPLES ARE THE BASIS OF MY DAILY LIFE;
- (2) THE NORTH YORK CIVIC EMPLOYEES UNION, LOCAL 94, CANADIAN UNION OF PUBLIC EMPLOYEES, DOES NOT IN ITS CONSTITUTION EXPRESSLY ACKNOWLEDGE THE BIBLE NOR GIVE EXPRESSION TO THE PRINCIPLES OF THE BIBLE;

- (3) THE NORTH YORK CIVIC EMPLOYEES UNION, LOCAL 94, CANADIAN UNION OF PUBLIC EMPLOYEES, DOES NOT CARRY ON ITS DAY TO DAY ACTIVITIES IN ACCORDANCE WITH THE PRINCIPLES OF THE BIBLE, WHICH PRINCIPLES I FIRMLY BELIEVE.

19. STEL'S EVIDENCE WAS IN SUBSTANTIAL AGREEMENT WITH THE REASONS SET OUT IN HIS APPLICATION. HE TESTIFIED THAT AS A CHRISTIAN HE SHOULD BE FREE TO JOIN A UNION OF HIS OWN CHOICE AND THAT WHEN HE WAS FACED WITH HAVING TO JOIN NUPE OR LOSE HIS JOB, HE DIDN'T FEEL FREE ACORDING TO HIS CONVICTIONS BECAUSE NUPE WAS NOT BASED ON THE BIBLE AND "WE FEEL IN EVERY WAY OF LIFE WE HAVE TO SERVE CHRIST THE LORD". IF AN ORGANIZATION DOES NOT HAVE THAT IN ITS CONSTITUTION "WE COULD NOT AGREE WITH IT BECAUSE IT WAS NOT THE WAY WE ARE TAUGHT AND WHAT WE BELIEVE". HE TESTIFIED FURTHER THAT WHEN FACED WITH HAVING TO JOIN NUPE HE HAD A SPIRITUAL DECISION TO MAKE AND THAT WHEN HE FINALLY TOOK THE OATH AS A MEMBER HE HAD COMPROMISED HIS RELIGIOUS CONVICTIONS. HE HAD READ THE NUPE CONSTITUTION AND HE COULD NOT FIND ANYTHING IN IT BASED ON THE BIBLE. THIS WAS IMPORTANT TO HIM BECAUSE HE HAS COMMITTED HIS LIFE TO CHRIST, BODY AND SOUL, SO HE WANTS TO BE A CHRISTIAN IN EVERYTHING HE DOES TO GLORIFY AND HONOUR GOD. HE COULD NOT FIND THAT IN THE CONSTITUTION OR IN THE ACTIVITIES OF THE UNION. HE READ, IN PART, FROM THE HEIDELBERG CATECHISM, ONE OF THE DOCTRINAL STANDARDS OF THE CHRISTIAN REFORMED CHURCH AS FOLLOWS:

QUESTION. WHAT IS YOUR ONLY COMFORT IN LIFE AND DEATH?

ANSWER. THAT I, WITH BODY AND SOUL, BOTH IN LIFE AND DEATH, AM NOT MY OWN, BUT BELONG UNTO MY FAITHFUL SAVIOR JESUS CHRIST; WHO WITH HIS PRECIOUS BLOOD HAS FULLY SATISFIED FOR ALL MY SINS, AND DELIVERED ME FROM ALL THE POWER OF THE DEVIL; AND SO PRESERVES ME THAT WITHOUT THE WILL OF MY HEAVENLY FATHER NOT A HAIR CAN FALL FROM MY HEAD; YEA, THAT ALL THINGS MUST BE SUBSERVIENT TO MY SALVATION, WHEREFORE BY HIS HOLY SPIRIT HE ALSO ASSURES ME OF ETERNAL LIFE, AND MAKES ME HEARTILY WILLING AND READY, HENCEFORTH, TO LIVE UNTO HIM.

WHEN ASKED WHAT THIS HAD TO DO WITH JOINING NUPE HE REPLIED THAT WITH BODY AND SOUL HE BELONGED TO CHRIST, THAT HIS BODY WAS COMMITTED BOTH IN HIS DAILY WORK AND IN HIS OUTLOOK ON LIFE AND IT WAS HIS DUTY TO SERVE CHRIST AND THEREFORE HE OBJECTED TO JOINING NUPE. IT WAS IMPORTANT THAT A LABOUR UNION BE BASED ON THE BIBLE BECAUSE BE BELIVED HIS LABOUR WAS FOR CHRIST. CUPE DIDN'T HAVE A CHRISTIAN OUTLOOK ON LIFE. HE COULD NOT PARTICIPATE IN ONE CHRISTMAS PARTY BECAUSE IT WAS HELD ON A SUNDAY AND THIS WAS SINFUL. IN STEL'S VIEW SUNDAY IS THE LORD'S DAY AND SHOULD BE KEPT HOLY. IT IS A DAY OF WORSHIP AND REST. HE HAD NEVER WORKED ON SUNDAY, FOR WHICH HE WOULD HAVE BEEN PAID DOUBLE TIME,

THOUGH ASKED TO DO SO. HE HAD ATTENDED ONE UNION CHRISTMAS PARTY HELD ON A SATURDAY, BUT IT WAS NOT A CHRISTMAS PARTY, ACCORDING TO HIS BELIEF. IT WAS A SANTA CLAUS PARTY. IT WAS MAN-CENTRED, NOT FOCUSED ON CHRIST. HE ALSO DISAPPROVED THE UNION CUSTOM OF REFERRING TO ONE ANOTHER AS BROTHER OR SISTER. TO HIS WAY OF THINKING, THE TERMS "BROTHER" AND "SISTER" CAN REFER ONLY TO A BLOOD RELATIONSHIP OR A RELATIONSHIP WITH CHRIST. HE FELT IT WAS HIS DUTY TO SUPPORT THE C.L.A.C. BECAUSE IT WAS BASED ON THE BIBLE, AND IN CONTRAST THERETO HE FELT HE COULD NOT, IN GOOD FAITH, BE A MEMBER OF CUPE. WHILE HE CONCEDED THAT CUPE DOES A GOOD JOB FOR ITS MEMBERS IN A MATERIALISTIC SENSE AND THAT HE HAD GOOD FRIENDS IN THE UNION AND ON THE EXECUTIVE, NEVERTHELESS ITS OUTLOOK WAS NOT BIBLICAL AND ITS ACTIVITIES WERE NOT IN ACCORDANCE WITH HIS CONVICTIONS BECAUSE NOT BASED ON THE BIBLE.

20. STEL CONCEDED THAT CUPE DID NOT INTERFERE WITH THE PRACTICE OF HIS RELIGION IN THE SENSE OF GOING TO CHURCH, SAYING PRAYERS WITH HIS MEALS, OR EVEN IN TALKING TO HIS FELLOW WORKERS AS A WITNESS FOR CHRIST. HE ADMITTED THAT HE HAD NOT FORMED A JUDGMENT THAT CUPE BY ITS CONSTITUTION HAD EMBRACED SINFUL ACTIVITIES, THOUGH, IN HIS VIEW, THE CHRISTMAS PARTY WAS SINFUL. WHILE HE COULD NOT POINT TO ANY SPECIFIC PROVISION IN THE CONSTITUTION THAT PUTS STRESS ON SINFUL PRACTICES OR CAUSED HIM SPIRITUAL HARDSHIP, HIS COMPLAINT WAS AN ABSENCE OF STATED SUPPORT FOR CHRISTIAN PRINCIPLES AND A FAILURE TO GIVE HIM SPIRITUAL GUIDANCE IN HIS WORK. HE REITERATED HIS OBJECTION TO BEING FORCED INTO SUCH AN ORGANIZATION AGAINST HIS WILL.

21. ON THIS EVIDENCE COUNSEL SUBMITTED THAT STEL'S OBJECTION TO JOINING CUPE WAS "BECAUSE OF HIS RELIGIOUS CONVICTION OR BELIEF". COUNSEL POINTED OUT THAT THESE WORDS WERE CAPABLE OF TWO INTERPRETATIONS, THAT IS, "RELIGIOUS CONVICTION OR RELIGIOUS BELIEF" OR AS THEY STAND WITH "RELIGIOUS" NOT MODIFYING "BELIEF". IT IS FAIR TO SAY THAT NO SERIOUS ARGUMENT WAS ADDRESSED TO THE BOARD ON THIS QUESTION BY EITHER COUNSEL. COUNSEL FOR THE RESPONDENT WAS OBVIOUSLY NOT TAKEN WITH THE SUGGESTION THAT "RELIGIOUS" DID NOT MODIFY "BELIEF", BUT HIS REFUTATION WAS CONFINED TO POINTING OUT THAT THE MARGINAL NOTE TO THE SECTION SPEAKS OF "RELIGIOUS OBJECTIONS". THIS, OF COURSE, IS NOT AN AID IN INTERPRETATION WHICH THE BOARD IS ENTITLED TO CONSIDER. SEE SECTION 9 OF THE INTERPRETATION ACT. IT IS ALSO FAIR TO SAY THAT THE WHOLE TENOR OF THE ARGUMENTS ADDRESSED TO US BY BOTH COUNSEL WAS ON THE BASIS THAT STEL'S OBJECTION WAS BECAUSE OF HIS RELIGIOUS BELIEF. THUS, THERE WAS NO ATTEMPT TO DEFINE "CONVICTION". ACCORDINGLY, WE DO NOT FIND IT NECESSARY OR EVEN DESIRABLE TO MAKE ANY FINAL DECISION ON THIS QUESTION. HOWEVER, OUR PRESENT INCLINATION IS TO VIEW THE WORD "RELIGIOUS" AS MODIFYING "BELIEF".

22. IN DEALING WITH WHAT CONSTITUTES A RELIGIOUS BELIEF, COUN-

SEL FOR THE APPLICANT STRESSED THE WORD "HIS". HE ARGUED THAT IT IS STEL'S RELIGIOUS BELIEF ONLY WITH WHICH WE SHOULD BE CONCERNED. HE SUBMITTED THAT WHAT IS RELIGIOUS IS WHAT THE INDIVIDUAL BELIEVES. HE REFERRED US TO WEBSTER'S SEVENTH NEW COLLEGIATE DICTIONARY WHERE RELIGIOUS IS DEFINED AS "1: RELATING OR DEVOTED TO THE DIVINE OR THAT WHICH IS HELD TO BE OF ULTIMATE IMPORTANCE 2: OF OR RELATING TO RELIGIOUS BELIEFS OR OBSERVANCES". IN THE SAME DICTIONARY "BELIEF" IS DEFINED AS "1: A STATE OR HABIT OF MIND IN WHICH TRUST OR CONFIDENCE IS PLACED IN SOME PERSON OR THING 2: SOMETHING BELIEVED; SPECIF : A TENET OR BODY OF TENETS HELD BY A GROUP 3: CONVICTION OF THE TRUTH OF SOME STATEMENT OR REALITY OF A FACT ESP. WHEN WELL GROUNDED". COUNSEL RELIED PRIMARILY ON THE FIRST DEFINITION OF BELIEF AND SUBMITTED THAT, ON THE EVIDENCE, STEL'S STATE OF MIND IS THAT MEMBERSHIP IN CUPE IS INCONSISTENT WITH HIS DUTY TO JESUS CHRIST AND THAT THIS CONSTITUTES HIS RELIGIOUS BELIEF.

23. ON THE OTHER HAND, COUNSEL FOR THE RESPONDENT TRADE UNION SUBMITTED, FIRSTLY, THAT "RELIGIOUS" SHOULD BE CONSTRUED IN THE SENSE OF TENETS OF A PARTICULAR RELIGIOUS FAITH, IN THIS CASE THE CHRISTIAN REFORMED CHURCH. IT WAS COUNSEL'S CONTENTION THAT IT WAS NOT ONE OF THE TENETS OF THAT CHURCH THAT A MEMBER COULD NOT JOIN A NEUTRAL UNION, THAT IS, AS WE UNDERSTAND IT, ONE THAT IS NOT BASED EXPRESSLY ON THE CHRISTIAN ETHIC OR PERHAPS CHRISTIANITY ITSELF. IN ONE SENSE, THERE IS NO EVIDENCE BEFORE THE BOARD ON THIS POINT. HOWEVER, STEL DID IDENTIFY A DECISION OF THE SYNOD OF THE CHURCH TAKEN FROM EXHIBIT NO. 4, A BOOK ENTITLED "THE CHRISTIAN REFORMED CHURCH" BY HOWARD B. SPAAN. THIS DECISION WAS ADMITTED NOT AS EVIDENCE OF THE FACT THAT IT WAS A DECISION OF THE SYNOD, BUT AS STEL'S UNDERSTANDING OF WHAT THE POSITION OF THE CHURCH WAS. COUNSEL ALSO SOUGHT TO INTRODUCE INTO EVIDENCE WHAT PURPORTED TO BE OTHER ACTS OF SYNOD. THE BOARD REFUSED TO ALLOW THEIR INTRODUCTION AND IN SO DOING GAVE THE FOLLOWING REASONS:

WE AGREE THAT THIS IS CLEARLY HEARSAY EVIDENCE. BY AND LARGE THE BOARD HAS REJECTED HEARSAY EVIDENCE IN CONTROVERSIAL MATTERS, PARTICULARLY WHEN IT IS OBJECTED TO BY ANOTHER PARTY. WHILE THERE MAY BE CIRCUMSTANCES WHERE THE BOARD WILL ADMIT HEARSAY, WE ARE NOT SATISFIED THAT THE EVIDENCE COULD NOT HAVE BEEN OBTAINED IN ANOTHER FASHION WHICH WOULD HAVE PERMITTED SOME CROSS-EXAMINATION. CERTAINLY WE DO NOT AGREE THAT THE FACT OF HAVING TO CALL A WITNESS WHOSE INTEREST COUNSEL HAS NO WAY OF KNOWING IN ADVANCE IS A GROUND FOR THE ADMISSION OF HEARSAY EVIDENCE. ACCORDINGLY, THE BOARD WILL NOT ACCEPT THE PROFFERED EVIDENCE.

FOR PRESENT PURPOSES, HOWEVER, WE ARE PREPARED TO ASSUME THAT IT IS NOT A TENET OF THE CHRISTIAN REFORMED CHURCH THAT MEMBERSHIP IN THE CHURCH AND IN A NEUTRAL UNION ARE INCOMPATIBLE. IF COUNSEL IS RIGHT IN HIS INTERPRETATION OF "RELIGIOUS BELIEF", THEN IT WOULD FOLLOW THAT STEL HAD NOT BROUGHT HIMSELF WITHIN THE MEANING OF THOSE WORDS.

24. IN SUPPORT OF HIS CONTENTION COUNSEL REFERRED US TO THE OXFORD DICTIONARY. THERE "RELIGION", AS A NOUN, IS DEFINED, AMONG OTHER THINGS, AS: "ONE OF THE PREVALENT SYSTEMS OF FAITH & WORSHIP (THE CHRISTIAN, MOHAMMEDAN...)" . COUNSEL ARGUED THAT, UNLESS SOME OBJECTIVE TEST WAS APPLIED, THE BOARD WOULD BE FLOODED BY APPLICATIONS FROM PERSONS WITH DEEPLY HELD BELIEFS. WE DO NOT THINK THAT THIS, IN ITSELF, IS SUFFICIENT TO GIVE THE WORD "RELIGIOUS" THE MEANING CONTENDED FOR BY COUNSEL. COUNSEL FOR THE APPLICANT REFERRED US TO TWO CASES IN RESPECT OF HIS CONTENTION THAT WHAT IS RELIGIOUS IS WHAT IS RELIGIOUS TO THE INDIVIDUAL. IN THE FIRST OF THESE, ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INC. V. THE COMMONWEALTH, (1943) 67 C.L.R. 122, A QUESTION AROSE AS TO WHETHER SECTION 116 OF THE AUSTRALIAN CONSTITUTION, WHICH PROVIDES AS FOLLOWS:

THE COMMONWEALTH SHALL NOT MAKE ANY LAW FOR ESTABLISHING ANY RELIGION, OR FOR IMPOSING ANY RELIGIOUS OBSERVANCE, OR FOR PROHIBITING THE FREE EXERCISE OF ANY RELIGION, AND NO RELIGIOUS TEST SHALL BE REQUIRED AS A QUALIFICATION FOR ANY OFFICE OR PUBLIC TRUST UNDER THE COMMONWEALTH.

PREVENTED THE AUSTRALIAN PARLIAMENT FROM LEGISLATING TO RESTRAIN THE ACTIVITIES OF A BODY, THE EXISTENCE OF WHICH WAS, IN THE OPINION OF THE GOVERNOR-GENERAL, PREJUDICIAL TO THE DEFENCE OF THE COUNTRY AND THE EFFICIENT PROSECUTION OF THE WAR. ON PAGES 123 AND 124 OF THE HIGH COURT DECISION CHIEF JUSTICE LATHAM MADE THE FOLLOWING OBSERVATIONS ON THE NATURE OF RELIGION:

IT WOULD BE DIFFICULT, IF NOT IMPOSSIBLE, TO DEVISE A DEFINITION OF RELIGION WHICH WOULD SATISFY THE ADHERENTS OF ALL THE MANY AND VARIOUS RELIGIONS WHICH EXIST, OR HAVE EXISTED, IN THE WORLD. THERE ARE THOSE WHO REGARD RELIGION AS CONSISTING PRINCIPALLY IN A SYSTEM OF BELIEFS OR STATEMENT OF DOCTRINE. SO VIEWED RELIGION MAY BE EITHER TRUE OR FALSE. OTHERS ARE MORE INCLUDED TO REGARD RELIGION AS PRESCRIBING A CODE OF CONDUCT. SO VIEWED A RELIGION MAY BE GOOD OR BAD. THERE ARE OTHERS WHO PAY GREATER ATTENTION TO RELIGION AS INVOLVING SOME PRE-

SCRIBED FORM OF RITUAL OR RELIGIOUS OBSERVANCE. MANY RELIGIOUS CONFLICTS HAVE BEEN CONCERNED WITH MATTERS OF RITUAL AND OBSERVANCE. SECTION 116 MUST BE REGARDED AS OPERATING IN RELATION TO ALL THESE ASPECTS OF RELIGION, IRRESPECTIVE OF VARYING OPINIONS IN THE COMMUNITY AS TO THE TRUTH OF PARTICULAR RELIGIOUS DOCTRINES, AS TO THE GOODNESS OF CONDUCT PRESCRIBED BY A PARTICULAR RELIGION, OR AS TO THE PROPRIETY OF ANY PARTICULAR RELIGIOUS OBSERVANCE. WHAT IS RELIGION TO ONE IS SUPERSTITION TO ANOTHER. SOME RELIGIONS ARE REGARDED AS MORALLY EVIL BY ADHERENTS OF OTHER CREEDS.

* * *

IT WAS SUGGESTED IN ARGUMENT THAT NO SYSTEM OF BELIEFS OR CODE OF CONDUCT OR FORM OF RITUAL COULD BE PROTECTED UNDER THE SECTION UNLESS THE GENERAL OPINION OF THE PRESENT DAY REGARDED THE BELIEF OR CONDUCT OR RITUAL AS BEING REALLY RELIGIOUS. IT IS TRUE THAT IN DETERMINING WHAT IS RELIGIOUS AND WHAT IS NOT RELIGIOUS THE CURRENT APPLICATION OF THE WORD "RELIGION" MUST NECESSARILY BE TAKEN INTO ACCOUNT, BUT IT SHOULD NOT BE FORGOTTEN THAT SUCH A PROVISION AS S. 116 IS NOT REQUIRED FOR THE PROTECTION OF THE RELIGION OF A MAJORITY. THE RELIGION OF THE MAJORITY OF THE PEOPLE CAN LOOK AFTER ITSELF. SECTION 116 IS REQUIRED TO PROTECT THE RELIGION (OR ABSENCE OF RELIGION) OF MINORITIES, AND, IN PARTICULAR, OF UNPOPULAR MINORITIES.

* * *

ON THE OTHER HAND, ALMOST ANY MATTER MAY BECOME AN ELEMENT IN RELIGIOUS BELIEF OR RELIGIOUS CONDUCT. THE WEARING OF PARTICULAR CLOTHES, THE EATING OR THE NON-EATING OF MEAT OR OTHER FOODS, THE OBSERVANCE OF CEREMONIES, NOT ONLY IN RELIGIOUS WORSHIP, BUT IN THE EVERYDAY LIFE OF THE INDIVIDUAL -- ALL OF THESE MAY BECOME PART OF RELIGION. ONCE UPON A TIME ALL THE OPERATIONS OF AGRICULTURE WERE CONTROLLED BY RELIGIOUS PRECEPTS. INDEED, IT

IS NOT AN EXAGGERATION TO SAY THAT EACH PERSON CHOOSES THE CONTENT OF HIS OWN RELIGION. IT IS NOT FOR A COURT, UPON SOME A PRIORI BASIS, TO DISQUALIFY CERTAIN BELIEFS AS INCAPABLE OF BEING RELIGIOUS IN CHARACTER. (EMPHASIS ADDED)

THESE PASSAGES CERTAINLY TEND TO SUPPORT THE ARGUMENT THAT "RELIGIOUS" SHOULD BE REGARDED FROM A SUBJECTIVE VIEW AND, IN PARTICULAR, THAT IT IS NOT FOR THE BOARD TO DISQUALIFY CERTAIN BELIEFS AS INCAPABLE OF BEING RELIGIOUS IN CHARACTER, EVEN THOUGH WE MIGHT OURSELVES NOT AGREE WITH THE BELIEF OR PERHAPS HAVE DIFFICULTY IN UNDERSTANDING IT.

25. THE ONTARIO COURT OF APPEAL HAS EXPRESSED SOMEWHAT SIMILAR VIEWS. IN DONALD V. HAMILTON BOARD OF EDUCATION [1945] O.R. 518, [1945] 3 D.L.R. 424, CERTAIN PUPILS WHO WERE AFFILIATED WITH JEHOVAH'S WITNESSES REFUSED, ON RELIGIOUS GROUNDS, TO PARTICIPATE IN SCHOOL CEREMONIES INVOLVING THE SALUTING OF THE FLAG AND SINGING THE NATIONAL ANTHEM. THEY WERE EXPELLED FROM SCHOOL. THE QUESTION BEFORE THE COURT WAS WHETHER THESE WERE RELIGIOUS EXERCISES (WHICH WERE NOT DEFINED) WITHIN THE EXEMPTION PROVIDED BY SECTION 7(1) OF THE PUBLIC SCHOOLS ACT, R.S.O. 1937, c. 357 AND HIGH SCHOOL REGULATION 12(1)(A). ONE OF THE ARGUMENTS ADDRESSED TO THE COURT WAS THAT THE EXERCISES IN QUESTION COULD NOT REASONABLY BE SAID TO CONNOTE ANY RELIGIOUS SIGNIFICANCE. GILLANDERS J.A. WITH WHOM HENDERSON AND ROACH JJ.A. AGREED, STATED AT PAGE 428:

...IF I WERE PERMITTED TO BE GUIDED BY MY PERSONAL VIEWS, I WOULD FIND IT DIFFICULT TO UNDERSTAND HOW ANY WELL DISPOSED PERSON COULD OFFER OBJECTION TO JOINING IN SUCH A SALUTE ON RELIGIOUS OR OTHER GROUNDS. ...BUT IT WOULD BE MISLEADING TO PROCEED ON ANY PERSONAL VIEWS ON WHAT SUCH EXERCISES MIGHT INCLUDE OR EXCLUDE.

HIS LORDSHIP CONTINUED AT PP. 429-30:

THE FACT THAT THE APPELLANTS CONSCIENTIOUSLY BELIEVE THE VIEWS WHICH THEY ASSERT IS NOT HERE IN QUESTION. A CONSIDERABLE NUMBER OF CASES IN OTHER JURISDICTIONS, IN WHICH A SIMILAR ATTITUDE TO THE FLAG SALUTE HAS BEEN TAKEN, INDICATES THAT AT LEAST THE SAME VIEW HAS BEEN CONSCIENTIOUSLY HELD BY OTHERS. THE STATUTE, WHILE IT ABSOLVES PUPILS FROM JOINING IN EXERCISES OF DEVOTION OR RELIGION TO WHICH THEY, OR THEIR PARENTS, OBJECT, DOES NOT FURTHER DEFINE OR SPECIFY WHAT SUCH EXERCISES ARE OR INCLUDE OR EXCLUDE. HAD IT DONE

SO, OTHER CONSIDERATIONS WOULD APPLY. FOR THE COURT TO TAKE TO ITSELF THE RIGHT TO SAY THAT THE EXERCISES HERE IN QUESTION HAD NO RELIGIOUS OR DEVOTIONAL SIGNIFICANCE MIGHT WELL BE FOR THE COURT TO DENY THAT VERY RELIGIOUS FREEDOM WHICH THE STATUTE IS INTENDED TO PROVIDE. (EMPHASIS ADDED)

THE COURT QUITE CLEARLY REJECTED THE OBJECTIVITY TEST PROPOSED BY THE SCHOOL BOARD WHEN IT ARGUED THAT THE EXERCISES IN QUESTION COULD NOT REASONABLY BE SAID TO CONNOTE ANY RELIGIOUS SIGNIFICANCE. IT SEEMS TO US THAT THE UNDERLYING TONE OF THE DECISION IS THAT WHAT IS RELIGION IS WHAT IS RELIGION TO THE INDIVIDUAL.

26. IN THE PRESENT CASE "RELIGIOUS" IS LIKEWISE UNDEFINED IN THE STATUTE. WE NOTE THAT IN WEBSTER'S DICTIONARY, REFERRED TO ABOVE, ONE OF THE MEANINGS OF "RELIGION" IS: "A PERSONAL SET OR INSTITUTIONALIZED SYSTEM OF RELIGIOUS ATTITUDES, BELIEFS AND PRACTICES" (EMPHASIS ADDED). SECTION 35A SPEAKS OF "HIS RELIGIOUS CONVICTION OR BELIEF:". IN THE LIGHT OF ALL THE ABOVE CONSIDERATIONS, WE ARE UNABLE TO CONCLUDE THAT AN APPLICANT'S RELIGIOUS CONVICTION OR BELIEF MUST NECESSARILY BE FOUNDED ON A TENET OR CREED OF A PARTICULAR RELIGIOUS FAITH.

27. COUNSEL FOR THE RESPONDENT WAS PREPARED TO CONCEDE THE POSSIBILITY OF A PERMISSIBLE SUBJECTIVE ELEMENT IN THE WORDS UNDER CONSIDERATION. HE ARGUED, HOWEVER, THAT A SIMPLE AFFIRMATION OF BELIEF WAS NOT ENOUGH, PARTICULARLY WHEN THERE WAS NO CREED OR TEACHINGS BY WHICH TO MEASURE IT. IN ORDER TO GIVE THE BOARD SOME STANDARDS BY WHICH TO MEASURE OR TEST WHETHER A PERSON HAS A BELIEF - OR, INDEED, A RELIGIOUS BELIEF - COUNSEL CALLED AS A WITNESS DR. RONALD DE SOUSA, AN ASSISTANT PROFESSOR ON THE FACULTY OF PHILOSOPHY AT THE UNIVERSITY OF TORONTO. ALTHOUGH DR. DE SOUSA'S EDUCATIONAL BACKGROUND WAS MORE CONCERNED WITH THE PHILOSOPHY OF LANGUAGE, MORE PARTICULARLY TRANSLATION AND GRAMMATICAL CATEGORIES, SINCE ASSUMING HIS POSITION WITH THE UNIVERSITY FIVE YEARS AGO, HIS FIELD HAS BEEN "BELIEF", AND HE HAS SEVERAL PAPERS PUBLISHED OR ABOUT TO BE PUBLISHED ON THIS SUBJECT. HIS EDUCATIONAL BACKGROUND, BY AND LARGE, DID NOT INCLUDE STUDIES ON THE PHILOSOPHY OF RELIGION.

28. COUNSEL FOR STEL OBJECTED TO THE ADMISSIBILITY OF THE EVIDENCE ON THE GROUND THAT THE QUESTION OF WHAT CONSTITUTES RELIGIOUS BELIEF IS THE VERY ISSUE WHICH THE BOARD MUST DECIDE. A SIMILAR QUESTION AROSE IN CEDARVALE TREE SERVICES LTD., OLRB M.R. FEB. 1970, P. 1305, INVOLVING THE WORD "HORTICULTURE" IN SECTION 2(c) OF THE LABOUR RELATIONS ACT. THE BOARD HELD THAT THE DEFINITION OF HORTICULTURE WAS NOT A MATTER FOR EXPERT TESTIMONY. THE EMPLOYER IN THAT CASE MOVED IN THE HIGH COURT TO QUASH THE DECISION OF THE BOARD AND

ONE OF THE GROUNDS FOR THE MOTION WAS THE RULING BY THE BOARD ON THE QUESTION OF EXPERT TESTIMONY. WRIGHT J. IN REFERENCE TO THE BOARD'S RULING SAID:

...I AGREE WITH THEIR RULING. IT IS NOT EVIDENCE, IN MY VIEWS, THAT A COURT SHOULD HEAR WHEN FACED WITH A PROBLEM OF INTERPRETATION OF A STATUTE INVOLVING WORDS OF COMMON OR NOT UNCOMMON USE.

SEE CEDARVALE TREE SERVICES LTD. V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183, 70 CLLC PAR. 14,045, AT PAGE 14,315.

AT THE TIME OF THE HEARING OF THIS CASE THE DECISION OF WRIGHT J., WHICH FOR OTHER REASONS QUASHED THE CERTIFICATION ORDER OF THE BOARD AND REMITTED THE MATTER TO THE BOARD, WAS UNDER APPEAL. THE EMPLOYER HAD ENTERED A CROSS APPEAL AND ONE OF THE GROUNDS THEREFOR WAS WRIGHT J.'S RULING ON THE QUESTION OF EXPERT TESTIMONY CONCERNING THE DEFINITION OF HORTICULTURE. FOR THAT REASON THE BOARD IN THIS CASE DECIDED TO HEAR THE EVIDENCE OF DR. DE SOUSA, SUBJECT TO FURTHER CONSIDERATION IN THE LIGHT OF THE COURT OF APPEAL DECISION. IN THE DECISION OF THE COURT OF APPEAL, RELEASED MAY 7, 1971, ARNUP J.A., SPEAKING FOR THE COURT SAID:

...WE WERE INVITED BY COUNSEL FOR CEDARVALE TO SAY THAT THE MAJORITY OF THE BOARD WAS WRONG IN SO HOLDING, BUT I AM NOT PREPARED TO DO THIS. THE WORD AS FOUND IN THE STATUTE IS A WELL RECOGNIZED ENGLISH WORD. IT IS OBVIOUSLY NOT A WORD OF PRECISE MEANING; THE DIFFERENCES IN MEANING HAVE ALREADY BEEN DEMONSTRATED BY THE MAJORITY AND MINORITY DECISIONS OF THE BOARD AND THAT OF WRIGHT, J. NEVERTHELESS, I DO NOT REGARD THE WORD WORD AS HAVING EITHER SUCH A "SPECIAL AND PECULIAR ACCEPTED" MEANING OR ONE SO SCIENTIFICALLY ESOTERIC THAT EXPERT EVIDENCE IS NEEDED TO ELUCIDATE IT.

SEE CEDARVALE TREE SERVICES LTD. V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183, 71 CLLC PAR. 14,087, AT P. 14,479.

29. WE ARE OF THE OPINION THAT THE WORDS "RELIGIOUS" AND "BELIEF" ARE "WORDS OF COMMON OR NOT UNCOMMON USE" TO QUOTE WRIGHT J. AND THAT THEY DO NOT HAVE "SUCH A SPECIAL AND PECULIAR ACCEPTED MEANING OR ONE SO SCIENTIFICALLY ESOTERIC THAT EXPERT EVIDENCE IS NEEDED TO ELUCIDATE" THEM, AS STATED BY ARNUP J.A. IT IS CLEAR, THEN THAT DR. DE SOUSA'S EVIDENCE, IN SO FAR AS IT PURPORTS TO DEFINE "RELIGIOUS" AND "BELIEF", IS NOT ADMISSIBLE. CAN IT BE SAID THAT THERE IS ANY DIFFERENCE BETWEEN THAT TYPE OF EVIDENCE AND THE WITNESS' EVIDENCE PURPORTING TO LAY DOWN EMPIRICAL TESTS FOR DETERMINING WHETHER

A PERSON TRULY HOLDS A BELIEF OR A RELIGIOUS BELIEF? WHILE IT MAY BE ARGUABLE THAT, JUST AS THERE ARE CERTAIN SCIENTIFIC TESTS FOR DETERMINING WHETHER A PERSON IS UNDER THE INFLUENCE OF DRUGS OR ALCOHOL, SO THERE ARE, FROM A PHILOSOPHICAL POINT OF VIEW, CERTAIN TESTS FOR DETERMINING WHETHER A PERSON TRULY HOLDS A BELIEF, THE TESTS THEMSELVES TEND TO BECOME SO ENTWINED WITH THE MEANING OF THE WORDS IN QUESTION THAT IT BECOMES DIFFICULT TO DECIDE WHAT IS AND WHAT IS NOT ADMISSIBLE. FURTHERMORE, THERE IS CONSIDERABLE DOUBT AS TO WHETHER WE SHOULD BE CONCERNED WITH THE QUESTION WHETHER, FROM A PHILOSOPHICAL POINT OF VIEW, IT CAN BE SAID STEL HOLDS A PARTICULAR BELIEF. THE QUESTION IS, ARE WE SATISFIED STEL DOES HAVE THE BELIEF, AND THIS, IN THE LAST ANALYSIS, IS A MATTER OF CREDIBILITY. ACCORDINGLY, WE HAVE GRAVE DOUBTS AS TO THE ADMISSIBILITY OF THE EVIDENCE IN QUESTION.

30. HOWEVER, EVEN IF THE EVIDENCE IS ADMISSIBLE, WE ARE NOT PREPARED TO ACCEPT IT AS LAYING DOWN A SERIES OF TESTS WHICH THE BOARD IS COMPELLED TO ADOPT IN ORDER TO DETERMINE WHETHER A PERSON HOLDS A PARTICULAR BELIEF. THUS, IN ANSWER TO THE QUESTION, "WHAT IS THE ROLE OF AFFIRMATION IN DETERMINING BELIEF?" THE WITNESS STATED THAT IT HAS A ROLE IN PRIMA FACIE EXPLAINING THE BELIEF, BUT HAS LITTLE OR NO ROLE IN DETERMINING ITS SINCERITY. WE ARE NOT PREPARED TO SAY THAT A SIMPLE AFFIRMATION BY A WITNESS THAT HE HOLDS A BELIEF MAY NOT, IN SOME CIRCUMSTANCES, BE SUFFICIENT TO PERSUADE US THAT HE HOLDS THAT BELIEF. THIS IS A QUESTION OF CREDIBILITY. AGAIN, WHILE THE WITNESS CONCEDED THAT A RELIGIOUS BELIEF IS UNIQUE IN THE SENSE THAT IT DOES NOT REQUIRE EMPIRICAL OR LOGICAL SUPPORT IN ORDER FOR IT TO BE HELD, HE NEVERTHELESS TESTIFIED THAT IT ADMITS OF NO COMPROMISE IF GENUINELY AND SINCERELY HELD AND THAT IT PLAYS A PERVASIVE ROLE IN A PERSON'S LIFE. ON THE OTHER HAND, HE FREELY ADMITTED THAT HE WAS AWARE THAT MEN OF STRONG RELIGIOUS CONVICTION, FOR EXAMPLE ST. PETER, HAVE BEEN KNOWN TO HAVE LAPSES. PERVASIVENESS IS NO DOUBT A FACTOR TO BE CONSIDERED, BUT, AGAIN, WE ARE NOT PREPARED TO SAY THAT IT IS AN ABSOLUTE REQUIREMENT IN EVERY CASE. FINALLY, DR. DE. SOUSA FOUND IT DIFFICULT TO ANSWER THE QUESTION AS TO WHETHER IT WAS EASIER TO ESTABLISH A RELIGIOUS BELIEF IF IT WAS FOUNDED ON THE TEACHINGS OF A PARTICULAR CHURCH OR CREED. HIS ANSWER WAS, "PERHAPS, YES, BUT WHAT ACTIONS DO FOLLOW FROM A RELIGIOUS BELIEF?" HE ADMITTED THAT A LACK OF UNDERSTANDING DOES NOT NECESSARILY MEAN THAT A PERSON DOES NOT BELIEVE, AS FOR EXAMPLE IN THE CASE OF THE CHRISTIAN CONCEPT OF THE TRINITY. ON THE WHOLE, WE TEND TO AGREE WITH COUNSEL FOR STEL THAT, AT MOST, DR. DE. SOUSA'S EVIDENCE, IF ADMISSIBLE, STANDS FOR LITTLE MORE THAN THAT STEL WOULD HAVE HAD A STRONGER CASE IF HE HAD REFUSED TO JOIN CUPE IN THE FIRST INSTANCE AND BECOME AN ECONOMIC MARTYR. IT DOES NOT REQUIRE THE TESTIMONY OF AN EXPERT ON THE MEANING OF "BELIEF" TO ARRIVE AT THAT CONCLUSION, PARTICULARLY WHEN THE EXPERT CONCEDED THAT THE NATURE OF BELIEF IS A MATTER OF PHILOSOPHIC DISPUTATION.

31. WE RETURN NOW TO THE QUESTION OF THE REASON WHY STEL OBJECTS TO JOINING CUPE. IN HIS TESTIMONY HE CLEARLY AFFIRMED THAT IT WAS WRONG FOR HIM TO JOIN CUPE BECAUSE THERE WAS NOTHING IN ITS CONSTITUTION OR IN ITS ACTIVITIES WHICH WAS AFFIRMATIVELY BASED ON THE BIBLE. THIS WAS IMPORTANT TO HIM BECAUSE HE HAD COMMITTED HIS LIFE TO CHRIST, BODY AND SOUL, BOTH IN HIS DAILY WORK AND IN HIS OUTLOOK ON LIFE. HE BELIEVES THAT HIS LABOUR IS FOR CHRIST. IT WAS WRONG FOR HIM TO BE FORCED TO JOIN A UNION WHICH WAS NOT SO COMMITTED BOTH IN ITS CONSTITUTION AND IN ITS DAILY ACTIVITIES. BEFORE HE IN FACT JOINED HE HAD TO MAKE A SPIRITUAL DECISION AND WHEN HE TOOK THE OATH IN JOINING HE COMPROMISED HIS RELIGIOUS CONVICTIONS. IT SEEMS CLEAR THAT, BASED ON THIS TESTIMONY OR AFFIRMATION, STEL OBJECTS TO JOINING CUPE BECAUSE OF HIS RELIGIOUS BELIEF IN THE SENSE IN WHICH WE HAVE EARLIER DEFINED THOSE WORDS. IT IS A STATE OF MIND THAT MEMBERSHIP IN CUPE IS INCONSISTENT WITH HIS DUTY TO JESUS CHRIST. THERE CAN BE LITTLE DOUBT THAT THIS RELATES TO THE DIVINE. IN FACT WE WOULD GO FURTHER, SHOULD IT BE NECESSARY FOR THIS CASE, AND FIND THAT THIS IS HIS RELIGIOUS CONVICTION, USING "CONVICTION" IN THE SENSE OF THE CONDITION OF BEING CONVINCED OR A SETTLED PERSUASION, AS SET OUT IN THE SHORTER OXFORD ENGLISH DICTIONARY, THIRD EDITION. STEL HIMSELF SPOKE OF HIS RELIGIOUS CONVICTIONS THROUGHOUT HIS EVIDENCE, AS WELL AS HIS BELIEFS.

32. IT IS CONVENIENT AT THIS POINT TO DEAL WITH THE ARGUMENT THAT STEL'S BELIEF IS NOT RELIGIOUS BUT RATHER A PRINCIPLE OF SOCIAL AND ETHICAL CONDUCT. IN SUPPORT THEREOF COUNSEL FOR THE RESPONDENT UNION REFERRED TO STEL'S EVIDENCE CONCERNING THE HEIDELBERG CATECHISM AND HIS COMMITMENT TO CHRIST IN BODY AND SOUL, REQUIRING HIM TO PRACTICE CHRISTIANITY TWENTY-FOUR HOURS A DAY. IN HIS VIEW, THIS IS THE SAME SORT OF THING ENVISAGED BY MCRUER C.J.H.C. IN TRENTON CONSTRUCTION WORKERS ASSOCIATION, LOCAL NO. 52 V. TANGE COMPANY LIMITED, (1963) 63 CLLC PAR. 15,459, WHEN AT P. 662 HE STATED:

WHATEVER MEANING ONE GIVES TO THE WORD "CREED" IT MUST INVOLVE A DECLARATION OF RELIGIOUS BELIEF. RELIGIOUS BELIEF, THEOLOGY AND STANDARDS OF ETHICAL OR SOCIAL CONDUCT ARE ALL VERY DIFFERENT THINGS. A REQUIREMENT TO UPHOLD CHRISTIAN ETHICAL OR SOCIAL PRINCIPLES AS TAUGHT IN THE BIBLE (WHATEVER THESE TERMS MAY MEAN) IS IN NO SENSE A REQUIREMENT TO SUBSCRIBE TO ANY DOCTRINE OR DOCTRINAL BELIEF. SOCIAL PRINCIPLES IN NO SENSE INVOLVE RELIGIOUS BELIEFS.

WE HAVE DIFFICULTY IN FOLLOWING THIS ARGUMENT, HAVING REGARD TO THE EVIDENCE IN THIS CASE. IN THE FIRST PLACE, WE ARE NOT CONCERNED HERE

WITH THE WORD "CREED" BUT RATHER WITH A DECLARATION OF STEL'S RELIGIOUS BELIEF. FURTHERMORE, AS WE READ THE PASSAGE, THE POINT THE LEARNED CHIEF JUSTICE WAS MAKING WAS THAT A PERSON COULD SUBSCRIBE TO CHRISTIAN ETHICAL OR SOCIAL PRINCIPLES, AS TAUGHT IN THE BIBLE, WITHOUT SUBSCRIBING TO A PARTICULAR RELIGIOUS BELIEF. HE DOES NOT SAY THAT A PERSON WHO, BECAUSE OF A PARTICULAR RELIGIOUS BELIEF, ALSO SUBSCRIBES TO THE SAME PRINCIPLES, MUST THEREFORE BE PUT IN THE SAME CLASSIFICATION AS THE PERSON WHO DOES NOT SUBSCRIBE TO THOSE BELIEFS. IN THE LATTER CASE, THE MOTIVATION MAY HAVE NOTHING TO DO WITH RELIGION, BUT MAY STEM FROM WHAT WAS REFERRED TO IN EVIDENCE AS A "HUMANISTIC CONVICTION". STEL'S CONVICTION OR BELIEF CLEARLY STEMS FROM A RELIGIOUS MOTIVATION, FROM HIS COMMITMENT TO THE DIVINE.

33. COUNSEL FOR CUPE ALSO SUBMITTED THAT STEL'S BELIEF OR OBJECTION WAS SECULAR IN NATURE AND THAT HE DID NOT RELATE HIS COMPLAINT WITH RESPECT TO THE COMPULSORY NATURE OF THE UNION AND ABSENCE OF FREEDOM OF CHOICE TO RELIGION. COUNSEL ARGUED, FURTHER, THAT THIS PARTICULAR BELIEF COULD NOT BE SINCERELY HELD BECAUSE IT WAS TOO SELECTIVE. IN SUPPORT THEREOF COUNSEL REFERRED TO EVIDENCE THAT STEL TOOK A CITIZENSHIP OATH, THAT HE VOTED IN ELECTIONS, THAT HE DID NOT SEEK A BIBLICAL FOUNDATION FOR THE WAY IN WHICH HIS EMPLOYER CONDUCTED HIS BUSINESS AND THAT HE PAID HIS TAXES. STEL'S ANSWER WITH RESPECT TO THE OATH OF ALLEGIANCE AND HIS RELATIONSHIP WITH HIS EMPLOYER WAS THAT THESE WERE FREE ASSOCIATIONS. HE WAS NOT FORCED INTO THEM AGAINST HIS WILL. WITH RESPECT TO THE OTHER MATTERS, STEL TESTIFIED THAT WHILE HE DID NOT THINK THE GOVERNMENT OF CANADA WAS EXPRESSLY FOUNDED ON THE PRINCIPLES OF THE BIBLE, NEVERTHELESS HE WAS OBLIGED BY THE BIBLE TO OBEY GOD AND THE LAWS OF THE LAND AND THE GOVERNMENT WHICH RULED OVER HIM AND PROTECTED HIM. HE WAS OBLIGED BY THE BIBLE TO PAY TAXES, EVEN THOUGH HE WOULD HAVE PREFERRED THAT PART OF HIS TAXES GO TO SUPPORT THE CHRISTIAN SCHOOLS. HE ADMITTED IT WAS SOMETIMES DIFFICULT TO FIND A CANDIDATE TO VOTE FOR IN ELECTIONS, BUT HE VOTED FOR THE MAN WHO HE BELIEVED WOULD LIVE UP TO STEL'S CHRISTIAN BELIEFS. HE WAS NOT HAPPY ABOUT SOME OF THE ACTIVITIES CARRIED ON BY GOVERNMENT, BUT THESE WERE THE SUBJECT OF PROTEST BY THE CHURCH AND ITS PAPERS.

34. COUNSEL'S ARGUMENTS ON THE SECULARITY AND SELECTIVITY OF THE BELIEF ARE, IN REALITY, ADDRESSED TO THE REASONABLENESS OF THE BELIEF. ALTHOUGH THERE MAY BE MANY WHO WOULD NOT UNDERSTAND STEL'S BELIEF AND WHILE THERE MAY BE MANY WHO WOULD FIND IT UNREASONABLE AND WOULD STRONGLY DISAGREE WITH IT, IT IS NOT FOR THE BOARD TO SUBSTITUTE ITS VIEW AS TO WHAT CONSTITUTES A RELIGIOUS BELIEF FOR THAT OF THE INDIVIDUAL. WHILE, FROM OUR POINT OF VIEW, WE MAY TEND TO CHARACTERIZE THE BELIEF AS SECULAR AND SELECTIVE, WE CANNOT ON THE EVIDENCE FIND THAT THIS IS STEL'S VIEWPOINT. HOWEVER UNREASONABLE THE BELIEF MAY APPEAR TO SOME, THE EVIDENCE IMPELS US TO THE CONCLU-

SION THAT STEL DOES HAVE THIS BELIEF AND IT IS ONE BASED ON HIS RELIGION.

35. IT WAS ARGUED, HOWEVER, THAT STEL'S EVIDENCE OR AFFIRMATION OF BELIEF IN THE WITNESS BOX MUST BE TESTED IN TERMS OF THE CONSISTENCY AND PERVASIVENESS OF THE BELIEF, PARTICULARLY WHERE IT WAS NOT FOUNDED ON A CREED OR TENET OF FAITH OF A PARTICULAR CHURCH. AS WE INDICATED ABOVE, WE ARE NOT PERSUADED THAT THESE ARE ABSOLUTE PRECONDITIONS TO THE ESTABLISHMENT OF THE RELIGIOUS BELIEF, BUT THEY MAY BE USEFUL IN SOME CASES WHERE THERE IS A CREDIBILITY ISSUE. IN THE PRESENT CASE WE HAVE FOUND STEL TO BE A CREDIBLE WITNESS. IT IS TRUE THAT HE JOINED CUPE AND THIS WAS CONTRARY TO HIS BELIEF. BUT THERE CAN BE NO DOUBT THAT PERSONS OF STRONG CONVICTION OR BELIEFS HAVE IN THE PAST AND WILL IN THE FUTURE COMPROMISE A CONVICTION OR BELIEF WITHOUT GIVING IT UP. IN THE PRESENT CASE STEL HAS CONSISTENTLY MAINTAINED HIS OBJECTION BECAUSE OF HIS BELIEF. HE OBJECTED WHEN THE ISSUE FIRST AROSE AND HE LATER OBJECTED TO THE OFFICERS OF CUPE AND, AS HE PUT IT, HE HAD ALL ALONG MADE IT CLEAR TO THE PRESIDENT THAT HE OBJECTED TO THE PRACTICES OF THE UNION. WHEN SECTION 35A BECAME LAW HE TOOK ACTION. WHILE HE WAS UNHAPPY THAT HE HAD COMPROMISED HIS CONVICTION, NEVERTHELESS HIS CONDUCT INDICATES THAT, OVER THE PERIOD OF TIME IN QUESTION, HE MAINTAINED HIS BELIEF IN A CONSISTENT FASHION.

36. FURTHER, EVIDENCE OF THE PERVASIVENESS AND THE NON-SELECTIVITY OF THE BELIEF IS TO BE FOUND IN OTHER CONDUCT OF THE WITNESS. THE BELIEF RESPECTING THE JOINING OF CUPE IS PART AND PARCEL OF HIS GENERAL BELIEF OR CONVICTION OF HIS COMMITMENT TO CHRIST IN BODY AND SOUL. HIS EVIDENCE RELATING TO HIS FINANCIAL CONTRIBUTIONS TO CHURCH AND SCHOOL, HIS CHURCH ATTENDANCE, HIS ROLE AS AN ELDER IN THE CHURCH, HIS REFUSAL TO WORK SUNDAYS, HIS BELIEFS ABOUT THE EDUCATION OF HIS CHILDREN AND THE CHILDREN OF OTHER MEMBERS OF THE CHURCH AND HIS ATTEMPTS AT MISSIONARY WORK IN HIS CONTACTS WITH HIS FELLOW WORKERS ARE ALL EVIDENCE OF THE PERVASIVENESS OF HIS GENERAL RELIGIOUS CONVICTION AND BELIEF.

37. ANOTHER ARGUMENT RAISED BY COUNSEL FOR CUPE WAS THAT THERE MUST BE INFORMED GROUNDS FOR THE RELIGIOUS CONVICTION OR BELIEF. WE DO NOT NECESSARILY AGREE WITH THIS SUBMISSION AS A GENERAL PRINCIPLE APPLICABLE TO ALL CASES. CERTAINLY WE CAN FORESEE THAT THERE WOULD BE CONTROVERSY OVER THE MEANING TO BE GIVEN TO "INFORMED" AND MUCH WILL DEPEND ON THE PARTICULAR CIRCUMSTANCES OF A GIVEN CASE. IN THE PRESENT CASE COUNSEL ATTACKS ON TWO POINTS, NAMELY STEL'S KNOWLEDGE CONCERNING CUPE AND HIS LACK OF KNOWLEDGE OR MISUNDERSTANDING OF THE TEACHINGS OF THE CHRISTIAN REFORMED CHURCH. THE FIRST GROUND RELATES TO THE APPLICANT'S CLAIM THAT THE CONSTITUTION OF CUPE "DOES NOT EXPRESSLY ACKNOWLEDGE THE BIBLE NOR GIVE EXPRESSION TO THE PRINCIPLES OF THE BIBLE" AND THAT CUPE "DOES NOT CARRY ON ITS DAY-TO-DAY ACTIVI-

TIES IN ACCORDANCE WITH THE PRINCIPLES OF THE BIBLE...".

38. SO FAR AS THE CONSTITUTION IS CONCERNED, STEL'S EVIDENCE WAS THAT HE READ THE CONSTITUTION OF NUPE AND COULD NOT FIND ANYTHING IN IT BASED ON THE BIBLE. HE "READ THE CONSTITUTION IN THE 1950'S, NOT SINCE, NOT FOR SEVEN OR EIGHT YEARS ANYWAY, AT LEAST". HE WAS AWARE OF THE CHANGEOVER FROM NUPE TO CUPE, APPARENTLY IN 1963, ALTHOUGH THE WITNESS WAS NOT CLEAR ON THIS POINT. HE HAS NOT FOUND OUT IF A NEW CONSTITUTION HAS BEEN ADOPTED AND HE WAS NOT AWARE WHETHER OR NOT LOCAL 94 HAD A SEPARATE CONSTITUTION OR BY-LAWS FROM THAT OF ITS PARENT UNION. HIS INDIVIDUAL EXPERIENCE WAS WITH THE NUPE CONSTITUTION. IN RE-EXAMINATION HE WAS ASKED IF HE HAD EVER ASKED FOR A COPY OF THE CUPE CONSTITUTION AND HIS ANSWER WAS, "IN THE BEGINNING, BUT I NEVER HAD ONE IN MY POSSESSION, ALTHOUGH I WAS ALLOWED TO READ ONE." HE DOESN'T BELIEVE HE ASKED FOR ONE TO KEEP BECAUSE HE KNEW WHAT WAS IN IT. THIS LAST EVIDENCE APPEARS TO CONFLICT WITH HIS EARLIER TESTIMONY, UNLESS WE INFER THAT HE REALLY MEANS THE NUPE CONSTITUTION. IN ANY EVENT, LOOKING AT THE EVIDENCE AS A WHOLE, WE ARE IN CONSIDERABLE DOUBT AS TO WHETHER STEL EVER READ THE CUPE CONSTITUTION. HIS CLAIM IS THAT LOCAL 94'S CONSTITUTION DOES NOT GIVE EXPRESSION TO THE PRINCIPLES OF THE BIBLE. WE DO NOT KNOW, NOR DOES STEL, WHETHER LOCAL 94 HAS A CONSTITUTION SEPARATE AND APART FROM IT PARENT OR WHETHER THE PARENT CONSTITUTION IS ALSO THAT OF THE LOCAL. THERE WAS NO EVIDENCE THAT STEL WAS EVER REFUSED A COPY, AT LEAST TO READ, OF ANY CUPE CONSTITUTION. NOR WAS THERE ANY EVIDENCE THAT STEL WAS AWARE FROM ANY OTHER SOURCE OF THE CONTENTS OF THAT CONSTITUTION.

39. IN ALL THE CIRCUMSTANCES WE ARE UNABLE TO FIND THAT STEL HAS READ THE CUPE CONSTITUTION IN WHATEVER FORM IT MAY TAKE. CLEARLY THE ONUS WAS ON STEL TO ESTABLISH THIS FACT, IF INDEED HE IS RELYING ON IT. HIS CLAIM, THEREFORE, ON THIS BRANCH OF THE CASE MUST REST ON HIS HAVING READ THE NUPE CONSTITUTION. HIS COUNSEL ARGUED THERE WAS NO EVIDENCE THAT THE NUPE CONSTITUTION CHANGED WHEN CUPE TOOK OVER FROM NUPE. WHILE THAT IS TRUE, THERE WAS ALSO NO EVIDENCE OF HOW THE CHANGE CAME ABOUT AND THE RELATIONSHIP, IF ANY, OF CUPE TO NUPE. IN THESE CIRCUMSTANCES, WE ARE NOT PREPARED TO CONCLUDE THAT STEL HAD ANY GROUNDS FOR BELIEVING THAT THE CONSTITUTIONS WERE THE SAME. IN ANY EVENT, HIS CLAIM IS NOT THAT HE BELIEVES THE CONSTITUTION OF CUPE DOES NOT EXPRESSLY ACKNOWLEDGE THE BIBLE NOR GIVE EXPRESSION TO THE PRINCIPLES OF THE BIBLE, BUT THAT IT DOES NOT, IN FACT, DO SO. ON THE BASIS OF ALL THE EVIDENCE, WE ARE NOT SATISFIED THAT STEL'S READING OF THE CONSTITUTION OF THE PREDECESSOR UNION, NUPE, ESTABLISHES HIS CLAIM BASED ON THE ASSERTION THAT CUPE'S CONSTITUTION DOES NOT EXPRESSLY ACKNOWLEDGE THE BIBLE NOR GIVE EXPRESSION TO THE PRINCIPLES OF THE BIBLE.

40. HOWEVER, STEL ALSO CLAIMED THAT CUPE DOES NOT CARRY ON ITS DAY-TO-DAY ACTIVITIES IN ACCORDANCE WITH THE PRINCIPLES OF THE BIBILE. THE SAME PROBLEM DOES NOT ARISE HERE BECAUSE, OF COURSE, STEL HAD FOR SOME TIME BEEN A MEMBER OF CUPE AND WAS IN A POSITION TO OBSERVE THESE ACTIVITIES. STEL NOT ONLY MADE THE CLAIM IN HIS APPLICATION, BUT TESTIFIED TO THAT EFFECT AS WELL. HE REGARDED AS SINFUL THE HOLDING OF CHRISTMAS PARTIES ON SUNDAY, THE FORM OF THE CHRISTMAS PARTY HELD ON SATURDAY AND THE USE OF THE WORDS "BROTHER" AND "SISTER". HE FELT UNCOMFORTABLE WHEN ATTENDING MEETINGS OF THE UNION. HE CANNOT BE A MEMBER IN GOOD FAITH. COUNSEL FOR THE RESPONDENT ARGUED THIS WAS NOT ENOUGH TO ESTABLISH THE CLAIM. WE DO NOT THINK IT NECESSARY TO DECIDE THIS POINT BECAUSE, IN OUR VIEW, THE EVIDENCE ESTABLISHES THAT STEL'S CLAIM IS MUCH BROADER. WHAT STEL IS MORE CONCERNED ABOUT IS WHAT CUPE, IN HIS VIEW, DOES NOT DO. STEL IS COMMITTED BODY AND SOUL TO CHRIST. HE WANTS TO BE A CHRISTIAN IN EVERYTHING HE DOES, INCLUDING HIS DAILY WORK. HE BELIEVES HIS LABOUR IS FOR CHRIST. HIS REAL COMPLAINT UNDER THIS HEADING IS THAT CUPE DOES NOT HAVE A CHRISTIAN OUTLOOK ON LIFE IN A POSITIVE WAY. WHAT HE WANTS IS SPIRITUAL GUIDANCE IN HIS DAILY WORK AND THIS HE DOES NOT GET FROM CUPE BECAUSE, IN HIS VIEW, ITS DAILY ACTIVITIES ARE NOT BASED ON THE BIBLE. THIS IS HIS TESTIMONY AND IF, PERHAPS, IT IS NOT PHRASED IN AN ARTICULATE FASHION, WE MUST REMEMBER THAT STEL WAS NOT SPEAKING IN HIS MOTHER TONGUE. FURTHERMORE, EVEN THOUGH WE MAY FIND IT DIFFICULT TO UNDERSTAND, IT IS HIS RELIGIOUS BELIEF WITH WHICH WE ARE CONCERNED AND HE WAS CERTAINLY IN A POSITION TO MAKE THAT ASSESSMENT FROM HIS OWN OBSERVATIONS. ACCORDINGLY, WE DO NOT AGREE WITH COUNSEL FOR THE RESPONDENT THAT THERE IS NO FOUNDATION FOR THIS BRANCH OF STEL'S CLAIM.

41. LET US NOW EXAMINE THE ARGUMENT THAT STEL'S BELIEF STEMS FROM "A MANIFEST MISTAKE OF FACT" REGARDING THE TEACHINGS OF THE CHRISTIAN REFORMED CHURCH ON THE SUBJECT OF SO-CALLED NEUTRAL UNIONS. FOR THE PURPOSES OF THIS ARGUMENT WE ARE AGAIN PREPARED TO ASSUME THAT THE SYNOD DECISION REFERRED TO EARLIER IN THESE REASONS REPRESENTS THE POSITION OF THE CHRISTIAN REFORMED CHURCH AND THAT THE OTHER ACTS OF SYNOD WHICH WERE NOT ADMITTED AS EVIDENCE ARE IN THE SAME VEIN. THE DECISION OR ACT IN QUESTION SPECIFICALLY STATES THAT "CHURCH MEMBERSHIP AND MEMBERSHIP IN A SO-CALLED NEUTRAL UNION ARE COMPATIBLE AS LONG AS SUCH UNION GIVES NO CONSTITUTIONAL WARRANT TO SIN NOR SHOWS IN ITS REGULAR PRACTICES THAT IT CHAMPIONS SIN". STEL ADMITTED THAT HE COULD NOT SAY THAT THE CONSTITUTION OF CUPE GAVE CONSTITUTIONAL WARRANT TO SIN. WITH RESPECT TO CHAMPIONING SIN IN ITS REGULAR PRACTICES HE SAID, "I SAID THIS BEFORE AND AM AGAINST IT. IT IS SINFUL TO HAVE A CHRISTMAS PARTY ON SUNDAY." WE HAVE ALREADY FOUND THAT STEL'S RELIGIOUS BELIEF NEED NOT BE FOUNDED ON A TENET OR FAITH OF THE CHRISTIAN REFORMED CHURCH IN ORDER TO COME WITHIN SECTION 35A. COUNSEL, HOWEVER, ARGUED THAT WHEN THE BELIEF IS NOT FOUNDED ON A SPECIFIC TENET, THEN AN APPLICANT MUST SHOW A CAREFUL, CONSCIOUS ANALYSIS OF THE PROBLEM AND THAT STEL'S MANIFEST MISTAKE OF FACT WITH

RESPECT TO THE TEACHINGS OF THE CHURCH INDICATED THAT NO SUCH ANALYSIS HAD BEEN MADE AND, THEREFORE, THE BOARD SHOULD NOT ACCEPT HIS AFFIRMATIONS IN THE WITNESS BOX.

42. WE ARE CERTAINLY NOT DISPOSED TO LAY DOWN ANY SUCH GENERAL RULE AS A REQUIREMENT FOR ESTABLISHING A RELIGIOUS BELIEF, UNRELATED TO A CREED OR TENET OF FAITH. IT SEEMS TO US THAT A RELIGIOUS BELIEF MAY COME ABOUT IN A VARIETY OF WAYS. WE ARE DEALING HERE WITH A VERY SUBJECTIVE MATTER AND THE QUESTION IS NOT HOW THE BELIEF IS ARRIVED AT BUT WHETHER THE PERSON DOES IN FACT HOLD THE BELIEF. NO DOUBT SOME PEOPLE ARRIVE AT A BELIEF IN THE MANNER SUGGESTED BY COUNSEL, BUT OTHERS MAY HOLD A BELIEF BECAUSE OF TEACHINGS IN CHILDHOOD AND STILL OTHERS ON PURE FAITH. EACH CASE WILL HAVE TO BE EXAMINED ON ITS MERITS.

43. IN THE PRESENT CASE THERE SEEMS LITTLE DOUBT THAT STEL WAS REALLY UNAWARE OF THE ACT OF SYNOD REFERRED TO ABOVE. IN GIVING HIS EVIDENCE IN CHIEF THERE WAS NO CLAIM BY STEL THAT HIS BELIEF WAS IN ACCORDANCE WITH A TENET OF THE CHRISTIAN REFORMED CHURCH. RATHER, HIS CLAIM WAS THAT AS A CHRISTIAN THIS IS WHAT HE BELIEVED AND THIS EVIDENCE IS IN ACCORD WITH THE PHRASING OF THE APPLICATION ITSELF. IN CROSS-EXAMINATION, WHEN ASKED HIS UNDERSTANDING OF THE TEACHINGS OF THE CHURCH WITH RESPECT TO MEMBERSHIP IN A TRADE UNION, HIS REPLY WAS THAT THE TEACHING IS THAT "WE BELONG IN BODY AND SOUL TO CHRIST AND THIS BELIEF IS BASED ON THE BIBLE. WE MUST DO THIS DUTY ALL OUR LIFE. THEREFORE THE CHURCH DOESN'T HAVE TO TELL US, WE KNOW." HE THEN WENT ON TO STATE HE WAS NOT AWARE OF ANY PRONOUNCEMENT BY THE CHURCH ON THE QUESTION. HE KNEW THAT IT WAS BEFORE SYNOD BUT THEY, ACCORDING TO STEL, NEVER MADE A PRONOUNCEMENT -- A STAND. "THEREFORE THE ANSWER HAS TO COME OUT OF OUR OWN HEART." HE WAS THEN ASKED, IF A DECISION WAS MADE PERMITTING MEMBERS TO JOIN A NEUTRAL UNION, WOULD HE FOLLOW ITS DICTATES AND HE ANSWERED, "NO, BECAUSE IT'S MY OWN CONVICTION AND BELIEF." WHILE COUNSEL FOR CUPE ARGUED THIS WAS PURELY SPECULATIVE, HE WAS THE ONE WHO FIRST PUT THE QUESTION, AND THE ANSWER WAS CLEARLY IN ACCORD WITH THE PRINCIPLES STEL HAD ALREADY STATED. THIS LINE OF QUESTIONING WAS EXPLORED FURTHER IN RE-EXAMINATION AND STEL'S EVIDENCE ON THIS POINT WAS AGAIN CONSISTENT WITH HIS ALREADY STATED PRINCIPLES. THUS, WHEN ASKED IF HE STILL OBJECTED TO JOINING CUPE HAVING REGARD TO THE ACT OF SYNOD CONTAINED IN EXHIBIT 3, HE REPLIED THAT A CHRISTIAN WHO OBJECTED TO JOINING A NEUTRAL UNION FOUND THIS OUT FOR HIMSELF. "HE SHOULD WORK ACCORDING TO HIS CONVICTIONS AS TO WHAT IS RIGHT WITH A FREE CONSCIENCE. I AM SURE SYNOD AGREES WITH THAT." IT IS INTERESTING TO NOTE THAT STEL WAS STILL OF THE OPINION THAT HIS BELIEFS WERE IN ACCORD WITH THOSE OF THE SYNOD. COUNSEL ALSO PUT QUESTIONS WITH RESPECT TO WHETHER SYNOD HAD MADE A DECISION ABOUT THE RIGHT OF MEMBERS OF NEUTRAL UNIONS TO HOLD OFFICE. STEL WAS UNAWARE OF SUCH A DECISION, ALTHOUGH HE KNEW THERE HAD BEEN DISCUSSION ABOUT IT.

44. IN EXAMINING THE GROUNDS FOR STEL'S BELIEF IN THE LIGHT OF THE ARGUMENT MADE BY COUNSEL FOR CUPE IT IS IMPORTANT TO NOTE THAT THERE APPEARS TO BE A SPLIT AMONG MEMBERS OF THE CHURCH ON THE QUESTION OF MEMBERSHIP IN NEUTRAL UNIONS. AT LEAST THIS APPEARS TO BE STEL'S VIEW, HAVING REGARD TO HIS TESTIMONY IN CROSS-EXAMINATION ABOUT THE POSITION OF THE TORONTO CLASSIS (A GROUP OF NEIGHBORING CHURCHES) AND THE LOCAL CONSISTORIES (A GROUP OF LOCAL CHURCH OFFICERS) VIS-A-VIS SYNOD. IF THIS BE THE CASE, THEN STEL'S "MISTAKE OF FACT" MAY BE FAR LESS "MANIFEST" THAN THAT URGED BY COUNSEL FOR CUPE AND CERTAINLY FAR MORE UNDERSTANDABLE.

45. AT THIS POINT IT IS CONVENIENT TO DEAL WITH ANOTHER ARGUMENT OF COUNSEL FOR CUPE RESPECTING STEL'S MOTIVATION AND THE GROUNDS FOR HIS BELIEF. STEL HAS BEEN A SPIRITUAL AND FINANCIAL SUPPORTER, THOUGH NOT A MEMBER, OF THE C.L.A.C. BECAUSE, AS HE PUT IT, THAT UNION WAS BASED ON THE BIBLE AND IT WAS HIS DUTY TO SUPPORT IT. HE TESTIFIED, FURTHER, THAT HE WOULD BE HAPPY TO JOIN A UNION BASED ON THE BIBLE AND IF HE COULD GET INTO A UNION OF HIS FREE CHOICE THAT UNION SHOULD HAVE BARGAINING RIGHTS, EVEN IF A MINORITY UNION. HE HAD HAD THIS IN MIND ALL ALONG AND THIS APPLICATION WAS A FIRST STEP IN THAT DIRECTION. COUNSEL FOR CUPE ARGUED THAT THE BOARD MUST BE SATISFIED THAT STEL'S SOLE REASON FOR SEEKING EXEMPTION IS HIS RELIGIOUS BELIEF AND THAT THIS EVIDENCE INDICATED THAT STEL'S VIEWS ON THE C.L.A.C. WERE AN IMPORTANT PART OF STEL'S MOTIVATION. WHILE THIS TO SOME EXTENT MAY BE TRUE, WE AGREE WITH COUNSEL FOR STEL THAT STEL'S SUPPORT OF THE C.L.A.C. IS CLOSELY TIED IN WITH HIS RELIGIOUS BELIEF. IT WAS HIS DUTY TO SUPPORT THE C.L.A.C. BECAUSE IT WAS BASED ON THE BIBLE, WHEREAS HE COULD NOT SUPPORT CUPE IN GOOD FAITH BECAUSE ITS ACTIVITIES WERE NOT SO BASED. THE FACT THAT HE WOULD LIKE TO HAVE THE C.L.A.C. REPRESENT HIM AND THE FACT THAT HE HOPES THIS APPLICATION WILL ULTIMATELY LEAD TO THAT DEVELOPMENT CANNOT DETRACT FROM THE FACT THAT THESE VIEWS ALL LEAD BACK DIRECTLY, IN STEL'S MIND, TO HIS RELIGIOUS CONVICTIONS BASED ON THE BIBLE. IN THE LIGHT OF ALL OF STEL'S EVIDENCE WITH RESPECT TO HIS RELIGIOUS BELIEF, WE ARE SATISFIED THAT THIS APPLICATION WOULD HAVE BEEN MADE EVEN IF THE C.L.A.C. HAD NOT EXISTED. THIS FINDING IS CONSISTENT WITH OUR EARLIER FINDING IN PARAGRAPH 9 THAT STEL, IF IT HAD BEEN NECESSARY FOR HIM TO DO SO, WOULD HAVE LAUNCHED THESE PROCEEDINGS WITHOUT THE ASSISTANCE OF THE C.L.A.C.

46. IN SUM, THEN, WHETHER STEL WAS RIGHTLY INFORMED OR NOT ON THE POSITION OF THE CHRISTIAN REFORMED CHURCH WITH RESPECT TO NEUTRAL UNIONS, WHETHER OR NOT HE MADE THE CAREFUL, CONSCIOUS ANALYSIS URGED BY COUNSEL FOR CUPE AND DESPITE HIS SUPPORT FOR THE C.L.A.C., THE EVIDENCE LEAVES US IN NO DOUBT THAT STEL'S OBJECTION TO JOINING CUPE IS BECAUSE OF HIS RELIGIOUS CONVICTION OR BELIEF.

47. WE BELIEVE WE HAVE NOW DEALT WITH ALL THE ISSUES RAISED BY COUNSEL WITH RESPECT TO THE MERITS OF THE APPLICATION. HAVING REGARD TO ALL THE EVIDENCE, THE REPRESENTATIONS OF COUNSEL AND IN THE LIGHT OF ALL THE FOREGOING CONSIDERATIONS, WE ARE SATISFIED THAT STEL, AN EMPLOYEE OF THE BOROUGH OF NORTH YORK, BECAUSE OF HIS RELIGIOUS CONVICTION OR BELIEF OBJECTS TO JOINING A TRADE UNION, NAMELY, THE NORTH YORK CIVIC EMPLOYEES UNION, LOCAL 94, CANADIAN UNION OF PUBLIC EMPLOYEES AND TO PAYING OF DUES OR OTHER ASSESSMENTS TO THAT UNION WHICH IS PARTY TO A COLLECTIVE AGREEMENT WITH THE BOROUGH CONTAINING PROVISIONS OF THE TYPE MENTIONED IN CLAUSE (A) OF SUBSECTION 1 OF SECTION 35 OF THE LABOUR RELATIONS ACT, NAMELY ARTICLE 32.1 AND ARTICLE 32.2

48. COUNSEL FOR THE RESPONDENT SUBMITTED THAT IF WE ARRIVED AT THIS CONCLUSION, THEN THE BOARD SHOULD NEVERTHELESS EXERCISE ITS DISCRETION AND REFUSE TO ISSUE AN ORDER UNDER SECTION 35A. IN SUPPORT THEREOF COUNSEL ARGUED THAT STEL WAS NOT COMPELLED TO JOIN ORIGINALLY IN THE SENSE OF BEING FACED WITH THE CHOICE OF A JOB OR UNEMPLOYMENT BUT RATHER WITH A CHOICE BETWEEN STEADY AND TEMPORARY WORK. HE ARGUED FURTHER THAT STEL WAS IN FACT A MEMBER FOR A LONG PERIOD OF TIME AND BEING A MEMBER DID NOT INTERFERE WITH THE PRACTICE OF HIS RELIGION OR CAUSE HIM SPIRITUAL HARDSHIP. HE POINTED OUT THAT UNDER SUBSECTION 2 OF SECTION 35 A NEW EMPLOYEE HIRED AFTER FEBRUARY 15, 1971 COULD NOT INVOKE SUBSECTION 1.

49. IN VIEW OF THE WORDS "THE BOARD MAY ORDER" IN SUBSECTION 1, IT IS LIKELY THAT THE BOARD DOES HAVE A DISCRETION EVEN THOUGH COUNSEL FOR STEL THOUGHT NOT. SHOULD IT BE EXERCISED IN THIS CASE? WE FIND IT DIFFICULT TO AGREE WITH COUNSEL THAT STEL WAS NOT "COMPELLED" TO JOIN IN THE FIRST INSTANCE. STEL WAS A MARRIED MAN WITH FIVE CHILDREN. HE WAS AN IMMIGRANT TO CANADA WHO HAD NOT HAD STEADY EMPLOYMENT. AS HE PUT IT, IT WAS "PRETTY HARD". THE DISTINCTION BETWEEN SUCH A PERSON AND ONE WHO, IF HE DID NOT JOIN, FACED UNEMPLOYMENT, IS A SOMEWHAT FINE ONE. FURTHER, WHILE IT IS TRUE THAT BEING A MEMBER DID NOT INTERFERE WITH THE DAILY PRACTICE OF HIS RELIGION, WE ARE UNABLE TO SAY THAT HE DID NOT SUFFER SPIRITUAL HARDSHIP. WHEN HE JOINED HE COMPROMISED HIS CONVICTIONS; HIS CONSCIENCE WAS TROUBLED. HE WAS UNHAPPY WHEN HE ATTENDED MEETINGS. HE FELT HE COULD NOT BE A MEMBER IN GOOD FAITH. HE WAS LOOKING FOR SPIRITUAL GUIDANCE IN HIS DAILY WORK, WHICH WASN'T THERE BUT WHICH, AS A MEMBER, HE FELT HE WAS ENTITLED TO. FURTHER, AS WE FOUND EARLIER, HIS OBJECTION WAS NOT A SINGLE ONE. ALL ALONG STEL HAD MADE IT CLEAR TO THE PRESIDENT THAT HE OBJECTED TO THE PRACTICES OF THE UNION. FINALLY, AGAIN, AS WE FOUND EARLIER, THE SECTION IS INTENDED TO APPLY TO EMPLOYEES WHO ARE ALREADY MEMBERS.

50. IN OUR VIEW THE BOARD SHOULD BE MOST JUDICIOUS IN THE EX-

ERCISE OF ITS DISCRETION UNDER THE SECTION. IT MUST NOT BE FORGOTTEN THAT THIS IS THE FIRST CASE UNDER THE SECTION AND IT WOULD CERTAINLY BE PREFERABLE TO HAVE MORE EXPERIENCE WITH THE SECTION BEFORE BEING CALLED ON TO EXERCISE THE SOMEWHAT DELICATE CHOICE THAT WOULD HAVE TO BE MADE BEFORE REFUSING AN ORDER TO WHICH AN APPLICANT WAS OTHERWISE ENTITLED. IN ANY EVENT, HAVING REGARD TO THE EVIDENCE AND ARGUMENTS BEFORE US ON THIS QUESTION, WE ARE NOT PREPARED TO REFUSE AN ORDER IN THIS CASE.

51. ACCORDINGLY, IT IS HEREBY ORDERED:

- (1) THAT ARTICLES 32.1 AND 32.2 OF THE COLLECTIVE AGREEMENT BETWEEN THE NORTH YORK CIVIC EMPLOYEES UNION, LOCAL 94, CANADIAN UNION OF PUBLIC EMPLOYEES AND THE CORPORATION OF THE BOROUGH OF NORTH YORK, MADE THE 22ND OF JUNE, A.D. 1970, DO NOT APPLY TO KLAAS STEL;
- (2) THAT KLAAS STEL IS NOT REQUIRED TO BE OR TO CONTINUE TO BE A MEMBER OF THE NORTH YORK CIVIC EMPLOYEES UNION, LOCAL 94, CANADIAN UNION OF PUBLIC EMPLOYEES OR TO PAY ANY DUES, FEES OR ASSESSMENTS TO THE SAID UNION;

PROVIDED THAT AMOUNTS EQUAL TO ANY DUES OR OTHER ASSESSMENTS ARE PAID BY KLAAS STEL TO OR ARE REMITTED BY THE CORPORATION OF THE BOROUGH OF NORTH YORK TO A CHARITABLE ORGANIZATION MUTUALLY AGREED UPON BY KLAAS STEL AND NORTH YORK CIVIC EMPLOYEES UNION, LOCAL 94, CANADIAN UNION OF PUBLIC EMPLOYEES.

52. IT WAS AGREED BY COUNSEL THAT THE QUESTION OF THE CHARITABLE ORGANIZATION TO BE MUTUALLY AGREED ON OR DESIGNATED BY THE BOARD, AS THE CASE MAY BE, SHOULD BE DEALT WITH AFTER THE RELEASE OF THIS DECISION IF STEL AND CUPE ARE UNABLE TO AGREE ON A CHARITABLE ORGANIZATION, THEN EACH SHOULD SO INFORM THE BOARD IN WRITING FORTHWITH AND SHOULD INCLUDE THEREIN ANY REPRESENTATIONS EACH MAY CARE TO MAKE AS TO THE CHARITABLE ORGANIZATION TO BE DESIGNATED BY THE BOARD. AS AT PRESENT ADVISED, THE BOARD SEES NO REASON TO PUT THE PARTIES TO THE EXPENSE OF A FURTHER HEARING ON THIS QUESTION.

DISSENT OF BOARD MEMBER E. BOYER: JULY 20, 1971.

1. THIS IS AN APPLICATION FOR AN EXEMPTION FROM A UNION SECURITY PROVISION OF A COLLECTIVE AGREEMENT UNDER SECTION 35A OF THE LABOUR RELATIONS ACT. THAT SECTION READS IN PART:

35A.- (1) WHERE THE BOARD IS SATISFIED THAT AN EMPLOYEE BECAUSE OF HIS RELIGIOUS CONVICTION OR BELIEF,

(A) OBJECTS TO JOINING A TRADE UNION; OR

(B) OBJECTS TO THE PAYING OF DUES OR OTHER ASSESSMENTS TO A TRADE UNION,...

IN SUCH A CASE THE BOARD MUST ASK ITSELF THE BASIC QUESTION "IS THE REASON FOR THE APPLICANT'S OBJECTION TO JOINING THE RESPONDENT TRADE UNION BECAUSE OF THE APPLICANT'S RELIGIOUS CONVICTION OR BELIEF?" THE ANSWER OF THE MAJORITY IN THIS CASE IS THAT THE APPLICANT HAS ESTABLISHED AN AFFIRMATIVE ANSWER TO THAT QUESTION. I CANNOT, HOWEVER, AGREE THAT THE OBJECTION IN THIS CASE IS BECAUSE OF RELIGIOUS CONVICTION OR BELIEF. THE EVIDENCE INDICATES THAT ALTHOUGH THE APPLICANT, STEL, GAVE HIS TESTIMONY IN WORDS OF A RELIGIOUS NATURE, THE REASON FOR HIS OBJECTION TO BEING A MEMBER OF CUPE IS NOT HIS RELIGIOUS CONVICTION OR BELIEF BUT HIS CONVICTION OR BELIEF ABOUT TRADE UNIONISM ITSELF.

2. THE EVIDENCE DISCLOSES THAT THERE CAN BE NO DOUBT THAT STEL OBJECTS TO JOINING CUPE. THE TASK FOR THE BOARD IS TO DETERMINE THE NATURE OF HIS OBJECTIONS AND IF THOSE OBJECTIONS ARE BASED UPON RELIGIOUS CONVICTION OR BELIEF THEN THE BOARD SHOULD GRANT STEL THE RELIEF HE SEEKS (ALTHOUGH IT APPEARS THE BOARD MAY HAVE SOME DISCRETION IN GRANTING SUCH RELIEF). IN FACT, THE QUESTION RAISED BY THE EVIDENCE GIVEN BY STEL IN THIS CASE REQUIRES THAT THE BOARD MUST DETERMINE WHETHER STEL'S OBJECTION IS BECAUSE OF HIS RELIGIOUS CONVICTION OR BELIEF, OR WHETHER HIS OBJECTION IS BECAUSE OF SOME OTHER CONVICTION OR BELIEF. IF THE EVIDENCE INDICATES THAT THE CONVICTION OR BELIEF UPON WHICH THE OBJECTION IS BASED IS SOMETHING OTHER THAN RELIGIOUS CONVICTION OR BELIEF, THEN THE BOARD MUST DISMISS THE APPLICATION. TO DO OTHERWISE WOULD BE TO IGNORE THE PLAIN AND SIMPLE LANGUAGE OF THE ACT, IN PARTICULAR, THE WORD "RELIGIOUS" IN SECTION 35A.

3. IN REVIEWING THE EVIDENCE SUBMITTED ON BEHALF OF THE APPLICANT CONCERNING HIS OBJECTION TO JOINING CUPE THE FOLLOWING EVIDENCE EMERGES AS THE BASIS FOR HIS OBJECTIONS:

A) STEL OBJECTED TO THE UNION HOLDING A CHRISTMAS PARTY, BOTH IN THAT IT WAS ONCE HELD ON SUNDAY AND ALSO THAT IT WAS IN REALITY A "SANTA CLAUS" PARTY. HE FOUND BOTH THESE PRACTICES TO BE OFFENSIVE.

- B) HE OBJECTED TO THE USE OF THE TERMS "BROTHER" AND "SISTER" AS FORMS OF ADDRESS AT UNION MEETINGS AND THIS MADE HIM UNCOMFORTABLE ATTENDING UNION MEETINGS.
- C) HE OBJECTED TO CUPE BECAUSE IT DID NOT CARRY ON ITS DAY TO DAY ACTIVITIES IN ACCORDANCE WITH THE PRINCIPLE OF THE BIBLE. AS ACCURATELY DESCRIBED IN THE MAJORITY DECISION, WHAT STEL IS COMPLAINING ABOUT IS WHAT CUPE DOES NOT DO. THAT IS, CUPE DOES NOT HAVE A CHRISTIAN OUTLOOK ON LIFE BECAUSE ITS ACTIVITIES ARE NOT BASED ON THE BIBLE.

THESE ARE ALL THE MATTERS THAT WERE RAISED IN EVIDENCE AS FORMING THE BASIS OF STEL'S OBJECTION TO JOINING CUPE BECAUSE OF HIS RELIGIOUS CONVICTION OR BELIEF. BEFORE DISCUSSING THESE MATTERS IN DETAIL IT IS CONVENIENT TO DEAL WITH TWO RELATED MATTERS. I AM IN AGREEMENT WITH THE MAJORITY FINDING THAT BECAUSE STEL HAS NOT READ THE CONSTITUTION OF CUPE, THAT PART OF HIS CLAIM BASED UPON THE ASSERTION THAT CUPE'S CONSTITUTION DOES NOT EXPRESSLY ACKNOWLEDGE THE BIBLE, HAS NOT BEEN ESTABLISHED TO THE SATISFACTION OF THE BOARD. FURTHER, ONE OF THE GROUNDS SUBMITTED IN HIS APPLICATION (REFERRED TO IN PARAGRAPH 18 OF THE MAJORITY DECISION) IS STEL'S PRINCIPLE THAT THE WHOLE OF MAN'S LIFE, INCLUDING HIS HOURS OF LABOUR MUST EXPRESS HIS LOVE OF GOD AND HIS NEIGHBOUR IN ACCORDANCE WITH THE PRINCIPLES OF THE BIBLE WHICH PRINCIPLES ARE THE PRINCIPLES OF HIS (STEL'S) DAILY LIFE. THIS IS STATED AS A GROUND FOR THE APPLICATION AND IT IS A STATEMENT OF RELIGIOUS CONVICTION AND BELIEF BUT IT DOES NOT RELATE EITHER TO THE RESPONDENT TRADE UNION NOR DOES IT DISCLOSE ANY OBJECTION TO JOINING THE RESPONDENT TRADE UNION AND THEREFORE CANNOT OF ITSELF BE SUFFICIENT TO ESTABLISH STEL'S ENTITLEMENT TO AN EXEMPTION UNDER SECTION 35A.

4. THE DIFFICULTY THAT ARISES FROM THE EVIDENCE AS PRESENTED BY STEL IN THIS CASE WAS THAT IT INCLUDED THE FOLLOWING:

- A) STEL FELT THAT IT WAS HIS DUTY TO SUPPORT THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (CLAC) RATHER THAN CUPE;
- B) STEL FELT THAT THE PRESENT APPLICATION WAS THE FIRST STEP IN THE DIRECTION OF HIS BEING A MEMBER OF A TRADE UNION BASED ON THE BIBLE

AND EVENTUALLY THE OBTAINING FOR SUCH A TRADE UNION OF BARGAINING RIGHTS, EVEN IF THAT UNION FORMED A MINORITY OF EMPLOYEES EMPLOYED BY HIS PRESENT EMPLOYER;

- c) THE CLAC HAS PLAYED AN ACTIVE PART IN HELPING STEL PREPARE AND PRESENT THE PRESENT APPLICATION.

IT IS IMPOSSIBLE FOR ME TO VIEW THIS EVIDENCE AS BEING PART OF A "RELIGIOUS" OBJECTION TO JOINING CUPE. THIS EVIDENCE INDICATES THAT STEL HOLDS CERTAIN VIEWS CONCERNING THE REPRESENTATION OF EMPLOYEES BY TRADE UNIONS. THIS IS EVIDENCE ABOUT WHICH TRADE UNION STEL WANTS TO REPRESENT HIM AND NOT EVIDENCE ABOUT STEL'S RELIGIOUS CONVICTIONS.

5. THERE IS THUS AMPLE EVIDENCE THAT STEL HOLDS CERTAIN BELIEFS ABOUT TRADE UNIONS AND THAT IT IS BECAUSE OF THESE "TRADE UNION BELIEFS" THAT HE OBJECTS TO JOINING CUPE. THAT HE PREFERENCES THE CLAC TO CUPE FOR RELIGIOUS REASONS, DOES NOT CHANGE THE CHARACTERIZATION OF THESE BELIEFS FROM "TRADE UNION BELIEFS" TO "RELIGIOUS BELIEFS". IF WE WERE TO ALLOW SUCH A CHANGE IN THE CHARACTERIZATION OF THESE BELIEFS THEN ANY BELIEF THAT HAS RELIGIOUS REASONS INCIDENTAL TO IT, WOULD HAVE TO BE CHARACTERIZED AS RELIGIOUS. IF THIS WERE THE CASE THEN THE WORD "RELIGIOUS" IN SECTION 35A WOULD NOT HAVE A MEANING SINCE ONE COULD NEVER DISTINGUISH BETWEEN RELIGIOUS BELIEFS AND NON-RELIGIOUS BELIEFS PARTICULARLY IF ONE MENTIONED ANY RELIGIOUS BELIEFS IN THE COURSE OF EXPLAINING A NON-RELIGIOUS OBJECTION TO JOINING A TRADE UNION. IN THIS REGARD, THE QUOTATION FROM THE DECISION OF CHIEF JUSTICE LATHAM OF THE AUSTRALIAN HIGH COURT, REFERRED TO IN PARAGRAPH 24 OF THE MAJORITY DECISION, IS OF SOME SIGNIFICANCE. THE REQUIREMENT THAT THE WORD "RELIGIOUS" IN SECTION 35A HAVE SUFFICIENT MEANING TO DISTINGUISH IT FROM "NON-RELIGIOUS", DOES NOT "DISQUALIFY CERTAIN BELIEFS AS BEING AS BEING INCAPABLE OF BEING RELIGIOUS IN CHARACTER". CERTAINLY, THE STATUTE ITSELF CONTEMPLATES THAT CERTAIN BELIEFS ABOUT TRADE UNIONS CAN BE OF A RELIGIOUS CHARACTER. I HAVE NO INTENTION OF DENYING THIS. NEVERTHELESS, THE SECTION REQUIRES THE BOARD TO GIVE A MEANING TO THE WORD "RELIGIOUS" SUFFICIENT TO DISTINGUISH IT FROM "NON-RELIGIOUS".

6. ON THE BASIS OF THE TOTALITY OF THE EVIDENCE GIVEN BY STEL I AM OF THE OPINION THAT STEL'S OBJECTION TO JOINING CUPE IS BASED ON HIS CONVICTIONS ABOUT TRADE UNIONISM. THE EVIDENCE RELATING TO STEL'S RELIGIOUS CONVICTIONS IS MERELY INCIDENTAL TO STEL'S REASONS FOR HOLDING THESE BELIEFS CONCERNING REPRESENTATION BY CERTAIN TYPES OF TRADE UNIONS, THEY DO NOT ON THEIR OWN FORM A RELIGIOUS OBJECTION TO JOINING CUPE OR ANY OTHER TRADE UNION. SINCE I HAVE CHARACTERIZED STEL'S OBJECTIONS AS BEING OF A NON-RELIGIOUS NATURE, THERE IS NO NEED FOR

ME TO COMMENT ON WHAT DOES CONSTITUTE EVIDENCE OF A RELIGIOUS OBJECTION TO JOINING A TRADE UNION.

7. I WOULD HAVE DISMISSED THE APPLICATION.

130-70-M: JOHN RENSO NOBELS (APPLICANT) V. THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL UNION No. 1065 (RESPONDENT TRADE UNION) V. JOSEPH BRANT MEMORIAL HOSPITAL OF THE BURLINGTON-NELSON HOSPITAL (RESPONDENT EMPLOYER).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: W. R. HERRIDGE, Q.C., AND R. D. PECK FOR THE APPLICANT; STANLEY SIMPSON AND S. PATTERSON FOR THE RESPONDENT TRADE UNION; AND NO ONE APPEARING FOR THE RESPONDENT EMPLOYER.

DECISION OF G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBER F. W. MURRAY: JULY 26, 1971.

1. THIS IS AN APPLICATION BY JOHN RENSO NOBELS UNDER SECTION 35A(1) OF THE LABOUR RELATIONS ACT FOR AN ORDER BY THE BOARD THAT ARTICLES 6.4 AND 6.5 OF THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT TRADE UNION, HEREINAFTER REFERRED TO AS "CUPE", AND THE RESPONDENT EMPLOYER, HEREINAFTER REFERRED TO AS "THE HOSPITAL", MADE THE 14TH DAY OF JANUARY, 1971, AND PURPORTING TO REMAIN IN FORCE AND IN EFFECT UNTIL SEPTEMBER 14TH, 1971, DO NOT APPLY TO NOBELS AND THAT HE IS NOT REQUIRED TO PAY ANY FEES, DUES OR OTHER ASSESSMENTS TO CUPE. IN THIS CASE THE APPLICANT IS NOT SEEKING AN ORDER THAT HE IS NOT REQUIRED TO JOIN CUPE BECAUSE HE IS NOT SO OBLIGATED UNDER THE TERMS OF THE COLLECTIVE AGREEMENT.

2. SECTION 35A WAS ENACTED BY S.O. 1970, c. 85, s. 14, WHICH CAME INTO FORCE ON FEBRUARY 15, 1971 BY PROCLAMATION. ON THAT DATE NOBELS WAS AN EMPLOYEE OF THE HOSPITAL, WAS IN THE BARGAINING UNIT DESCRIBED IN THE ABOVE-NOTED COLLECTIVE AGREEMENT AND WAS BOUND BY ITS TERMS AND CONDITIONS. THE AGREEMENT WAS IN FORCE ON FEBRUARY 15, 1971. ARTICLES 6.4 AND 6.5 OF THE AGREEMENT ARE OF THE TYPE MENTIONED IN CLAUSE (A) OF SUBSECTION 1 OF SECTION 35 OF THE LABOUR RELATIONS ACT IN THAT THEY REQUIRE, INTER ALIA, THE PAYMENT OF DUES OR CONTRIBUTIONS TO CUPE AS A CONDITION OF EMPLOYMENT. CLEARLY, THEREFORE, NOBELS IS AN EMPLOYEE TO WHOM SECTION 35A(1) APPLIES.

3. THIS WAS THE SECOND APPLICATION TO BE HEARD AND CONSIDERED BY THE BOARD UNDER SECTION 35A. AS IN THE FIRST CASE (THE CORPORA-

TION OF THE BOROUGH OF NORTH YORK, BOARD FILE NO. 129-70-M), WE HAVE HAD THE ADVANTAGE OF FULL AND ABLE ARGUMENT BY COUNSEL ON BEHALF OF NOBELS AND CUPE. THE HOSPITAL, ALTHOUGH IT FILED A REPLY, DID NOT PARTICIPATE IN THE PROCEEDINGS. AS WITH THE FIRST APPLICATION, WE HAVE TAKEN SOME TIME TO CONSIDER THE ISSUES RAISED AND ARGUED. SOME OF THESE WERE THE SAME AS OR SIMILAR TO THOSE DEALT WITH IN THE BOARD'S DECISION IN THE FIRST APPLICATION. IT IS NOT OUR INTENTION TO REPEAT AT LENGTH THOSE ARGUMENTS AND THEIR RESOLUTION, BUT RATHER, WE SHALL CONCENTRATE OUR ATTENTION UPON THOSE ISSUES AND ARGUMENTS WHICH DIFFER FROM THOSE IN THE FIRST APPLICATION.

4. THE EVIDENCE ESTABLISHES THAT NOBELS, WHO WAS BORN IN HOLLAND, EMIGRATED TO CANADA IN APRIL, 1953. HE WAS A PAINTER AND DECORATOR BY TRADE AND WORKED AT THE TRADE BOTH IN HOLLAND AND IN CANADA UNTIL JOINING THE STAFF OF THE HOSPITAL NINE YEARS AGO. HE IS PRESENTLY EMPLOYED AS AN OPERATING ROOM ORDERLY. HE IS MARRIED AND HAS FOUR CHILDREN. HE IS A MEMBER OF THE EBENEZER CANADIAN REFORMED CHURCH, WHICH IS SIMILAR TO BUT NOT THE SAME AS THE CHRISTIAN REFORMED CHURCH, WHICH IS REFERRED TO IN THE CORPORATION OF THE BOROUGH OF NORTH YORK APPLICATION. THE CANADIAN REFORMED CHURCH HAS A COUNTERPART IN HOLLAND WHICH APPARENTLY SPLIT FROM THE DUTCH EQUIVALENT OF THE CHRISTIAN REFORMED CHURCH IN 1943-44. NOBEL'S CHILDREN WERE EDUCATED IN A CHRISTIAN REFORM SCHOOL IN HOLLAND, THOUGH NOT IN CANADA BECAUSE THERE WAS NONE AVAILABLE. ALTHOUGH HE DOES NOT NOW HAVE CHILDREN OF SCHOOL AGE, HE NEVERTHELESS IS A SUPPORTER OF A CHRISTIAN SCHOOL RUN BY THE MEMBERS OF THE CHURCH. HE SUPPORTS THIS SCHOOL BECAUSE PUBLIC SCHOOLS DO NOT TEACH THE BIBLE, WHEREAS THE CHRISTIAN SCHOOL DOES. IT IS NOBEL'S BELIEF THAT CHRISTIAN DOCTRINE SHOULD BE TAUGHT BECAUSE IT IS IMPORTANT TO LIFE. HE BELIEVES THAT IF CHILDREN ARE TAUGHT IN THE CHRISTIAN WAY THEY WILL BE GOOD MEN IN LATER LIFE. NOBEL'S ANNUAL CONTRIBUTION TO HIS CHURCH AND TO THE SCHOOL HAS EXCEEDED \$360 PLUS SUNDAY OFFERINGS. HE ATTENDS CHURCH TWICE ON SUNDAY.

5. IN PARAGRAPH 5 OF HIS APPLICATION NOBELS SET OUT HIS RELIGIOUS CONVICTION OR BELIEF IN SUPPORT OF HIS CLAIM AS FOLLOWS:

MY CHRISTIAN CONVICTION AND BELIEF DOES NOT PERMIT ME AS A MATTER OF CONSCIENCE TO JOIN OR IN ANY WAY TO FINANCIALLY SUPPORT THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL UNION, NO. 1065 ON THE FOLLOWING GROUNDS:

(1) I BELIEVE THAT THE WHOLE OF MAN'S LIFE, INCLUDING HIS HOURS OF LABOUR, MUST EXPRESS HIS LOVE OF GOD AND HIS NEIGHBOR IN ACCORDANCE WITH THE PRINCIPLES OF THE BIBLE, WHICH PRINCIPLES ARE

THE BASIS OF MY DAILY LIFE;

- (2) THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL UNION, No. 1065 DOES NOT IN ITS CONSTITUTION EXPRESSLY ACKNOWLEDGE THE BIBLE NOR GIVE EXPRESSION TO THE PRINCIPLES OF THE BIBLE;
- (3) THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL UNION, No. 1065, DOES NOT CARRY ON ITS DAY TO DAY ACTIVITIES IN ACCORDANCE WITH THE PRINCIPLES OF THE BIBLE, WHICH PRINCIPLES I FIRMLY BELIEVE.

6. NOBELS TESTIFIED THAT HE OBJECTED TO JOINING OR PAYING DUES TO CUPE BECAUSE ITS CONSTITUTION WAS NOT BASED ON THE BIBLE AND DID NOT EXPRESSLY ACKNOWLEDGE THE WORD OF GOD. HE HAS COMMITTED HIS WHOLE LIFE, BODY AND SOUL, TO JESUS CHRIST AND HE COULD NOT SUPPORT A UNION WHICH WAS NOT BASED ON THE BIBLE. NOBELS TESTIFIED FURTHER THAT CUPE'S ACTIVITIES WERE NOT BASED ON CHRISTIAN PRINCIPLE AND THE BIBLE BECAUSE IT WAS NOT SO STATED IN ITS CONSTITUTION. CUPE WAS MATERIALISTIC AND HE, AS A CHRISTIAN, COULD NOT HAVE PEACE WITH THAT. AS AN EXAMPLE OF ACTIVITIES TO WHICH HE OBJECTED HE REFERRED TO THE CASE OF TWO MEMBERS OF HIS CHURCH WHO WERE REQUIRED TO JOIN CUPE AND REFUSED AND SO WERE FIRED BY THE BURLINGTON BOARD OF EDUCATION, DESPITE THE FACT THAT THEY WERE MARRIED MEN WITH CHILDREN. HE OBJECTED TO THE ELEMENT OF COMPULSION IN THE COLLECTIVE AGREEMENT. IT WAS CONTRARY TO HIS RELIGIOUS BELIEF BECAUSE HE HAD COMMITTED HIS WHOLE LIFE AND SOUL, INCLUDING HIS HOURS OF WORK AND ENTERTAINMENT, TO JESUS CHRIST. THE EXISTENCE OF COMPULSION AND THE ABSENCE OF FREE CHOICE WAS AGAINST HIS RELIGIOUS BELIEF AND WAS A SPIRITUAL HARDSHIP TO HIM. NOBELS WENT ON TO TESTIFY THAT IF HE WAS REQUIRED TO PAY DUES TO CUPE HE WOULD QUIT HIS JOB, ALTHOUGH HE HAD NO WISH TO DO SO, BECAUSE HE LIKED HIS JOB AND LIKED WORKING WITH PEOPLE ALL THE TIME. NOBELS WAS PREPARED TO JOIN AND IN FACT HAD JOINED ANOTHER TRADE UNION, THE CHRISTIAN LABOUR ASSOCIATION OF CANADA, HEREINAFTER REFERRED TO AS "THE C.L.A.C.", BECAUSE IN ITS CONSTITUTION IT IS STATED THAT IT WORKS AND LIVES BY THE BIBLE AND CHRISTIAN PRINCIPLES.

7. IT FOLLOWS FROM THIS LAST TESTIMONY OF NOBELS THAT HE DOES NOT OBJECT TO JOINING ALL TRADE UNIONS. THE FIRST ARGUMENT OF COUNSEL FOR CUPE IN THIS CASE WAS THAT THIS FACT ALONE DISENTITLED NOBELS TO RELIEF UNDER SECTION 35A(1) OF THE LABOUR RELATIONS ACT. THIS APPLICATION WAS THE FIRST OF THREE HEARD BY THIS DIVISION OF THE BOARD INVOLVING EMPLOYEES OF THE HOSPITAL. THE OTHER TWO CASES WERE HEARD SUCCESSIVELY AND COUNSEL THEN ARGUED BOTH CASES TOGETHER. IN THE SECOND AND THIRD CASES THE SAME QUESTION AROSE AND COUNSEL FOR CUPE EXPANDED CONSIDERABLY ON HIS ARGUMENT AS PRESENTED IN THIS FIRST APPLIC-

ATION INVOLVING "THE HOSPITAL". BECAUSE THE SAME COUNSEL WERE INVOLVED IN THE THREE CASES, WHICH WERE ALL HEARD BY THE SAME PANEL OF THE BOARD, WE BELIEVE THERE CAN BE NO OBJECTION TO OUR CONSIDERING AT THIS TIME THE ARGUMENTS ADDRESSED TO US IN ALL THREE APPLICATIONS ON THIS PARTICULAR POINT.

8. SUBSECTION 1 OF SECTION 35A PROVIDES IN PART AS FOLLOWS:

35A-(1) WHERE THE BOARD IS SATISFIED THAT AN EMPLOYEE BECAUSE OF HIS RELIGIOUS CONVICTION OR BELIEF,

(A) OBJECTS TO JOINING A TRADE UNION; OR

(B) OBJECTS TO THE PAYING OF DUES OR OTHER ASSESSMENTS TO A TRADE UNION,

THE BOARD MAY ORDER THAT THE PROVISIONS OF A COLLECTIVE AGREEMENT OF THE TYPE MENTIONED IN CLAUSE A OF SUBSECTION 1 OF SECTION 35 DO NOT APPLY TO SUCH EMPLOYEE AND THAT THE EMPLOYEE IS NOT REQUIRED TO JOIN THE TRADE UNION, TO BE OR CONTINUE TO BE A MEMBER OF THE TRADE UNION, OR TO PAY ANY DUES, FEES OR ASSESSMENTS TO THE TRADE UNION, PROVIDED

IT WAS MR. SIMPSON'S SUBMISSION THAT THE WORDS "A TRADE UNION" IN CLAUSES (A) AND (B) ABOVE MUST BE CONSTRUED TO MEAN "ANY TRADE UNION". THIS CONSTRUCTION WAS REJECTED BY THE BOARD IN THE CORPORATION OF THE BOROUGH OF NORTH YORK CASE, IN A DECISION DATED JULY 20, 1971. IN SO FAR AS COUNSEL'S ARGUMENT IN THIS CASE WAS BASED ON ARGUMENTS DEALT WITH BY THE BOARD IN THAT CASE, WE SEE NO REASON TO DEPART FROM OUR EARLIER DECISION. THE CASES REFERRED TO BY COUNSEL, RE GRAWBARGER & MOYER, (1930), 65 O.L.R. 491, [1930] 4 D.L.R. 651; PRICE BROTHERS & CO. LTD. V. THE KING, [1926] 3 D.L.R. 642; AND RE MULHOLLAND V. BARTSCH, BARTSCH & LA FLAIR, [1939] 2 D.L.R. 747, 2 W.W.R. 108, STAND ONLY FOR THE PROPOSITION THAT, IN THE PARTICULAR CIRCUMSTANCES OF THOSE CASES, "A" MAY MEAN "ANY". THUS IN THE GRAWBARGER CASE, THE PREVIOUS LEGISLATIVE HISTORY OF THE SECTION OF THE STATUTE IN QUESTION WAS A KEY POINT IN THE DECISION, TOGETHER WITH THE FACT THAT IT WAS NECESSARY TO READ "A" AS "ANY" IF THE SECTION WAS TO BE GIVEN ANY MEANING AT ALL. NEITHER OF THESE FACTORS IS PRESENT IN THIS CASE. AGAIN, IN THE MULHOLLAND CASE, "A" OR "THE" COULD HAVE BEEN USED IN DRAFTING THE RULE OF COURT THERE UNDER CONSIDERATION. THE FACT THAT "A" AND NOT "THE" WAS CHOSEN WAS CONSIDERED SIGNIFICANT. AS WAS POINTED OUT IN THE BOROUGH OF NORTH YORK DECISION, THIS CHOICE WAS NOT OPEN TO THE DRAFTSMEN IN DEALING WITH SECTION 35A(1). FINALLY, WE HAVE CON-

SIDERABLE DIFFICULTY IN UNDERSTANDING HOW THE PRICE BROTHERS CASE IS OF ANY HELP TO COUNSEL. HE APPEARED TO CITE IT FOR THE PROPOSITION THAT THE WORDS "A LEAGUE" IN A GRANT OF LAND WERE CONSTRUED TO MEAN "ALL LEAGUES". AS WE READ THE CASE, THE MEANING OF "LEAGUE" WAS NOT IN QUESTION. THE ISSUE WAS, RATHER, WHERE TO MEASURE THE DISTANCE OF ONE LEAGUE AROUND A LAKE THOUGHT, IN 1694, TO BE ONE LAKE, WHICH LATER PROVED TO BE THREE LAKES. HOWEVER, IF WE ARE WRONG ON THIS POINT, THEN MOST CERTAINLY THIS IS A CASE WHICH MUST DEPEND ON ITS OWN PARTICULAR CIRCUMSTANCES.

9. HOWEVER, MR. SIMPSON ALSO ADVANCED A SOMEWHAT DIFFERENT ARGUMENT THAN WAS MADE IN THE NORTH YORK CASE. HIS SUBMISSION STARTS FROM THE FACT THAT, AS APPEARS FROM THE SHORTER OXFORD ENGLISH DICTIONARY, ALTHOUGH "A" WAS ORIGINALLY USED AS A DEFINITE ARTICLE, IT IS NOW USED AS AN INDEFINITE ARTICLE WHICH MAY MEAN ONE, SOME OR ANY. THUS, IT WAS SUBMITTED, IN ORDER TO ASCERTAIN THE MEANING OF "A" IN SECTION 35A(1), ONE MUST LOOK TO THE SECTION ITSELF AND IN PARTICULAR TO OTHER SECTIONS OF THE LABOUR RELATIONS ACT. COUNSEL FIRST POINTED OUT THAT THE FIRST PART OF SECTION 35A(1) DOWN TO THE END OF CLAUSE (B) IS OF A GENERAL NATURE, WHILE THE REST OF THE SUBSECTION IS OF A SPECIFIC NATURE. WE ARE NOT CERTAIN THAT WE UNDERSTAND HOW THIS ADVANCES COUNSEL'S MAIN SUBMISSION. BE THAT AS IT MAY, COUNSEL THEN REFERRED THE BOARD TO SECTION 3 AND TO SUBSECTIONS (1) AND (2) OF SECTION 35 OF THE ACT. THESE SECTIONS PROVIDE:

3. EVERY PERSON IS FREE TO JOIN A TRADE UNION OF HIS OWN CHOICE AND TO PARTICIPATE IN ITS LAWFUL ACTIVITIES.

* * *

35.-(1) NOTWITHSTANDING ANYTHING IN THIS ACT, BUT SUBJECT TO SUBSECTION 4, THE PARTIES TO A COLLECTIVE AGREEMENT MAY INCLUDE IN IT PROVISIONS,

- (A) FOR REQUIRING, AS A CONDITION OF EMPLOYMENT, MEMBERSHIP IN THE TRADE UNION THAT IS A PARTY TO OR IS BOUND BY THE AGREEMENT OR GRANTING A PREFERENCE OF EMPLOYMENT TO MEMBERS OF THE TRADE UNION, OR REQUIRING THE PAYMENT OF DUES OR CONTRIBUTIONS TO THE TRADE UNION;
- (B) FOR PERMITTING AN EMPLOYEE WHO REPRESENTS THE TRADE UNION THAT IS A PARTY TO OR IS BOUND BY THE AGREEMENT TO ATTEND TO THE BUSINESS OF THE TRADE UNION DURING WORKING

HOURS WITHOUT DEDUCTION OF THE TIME SO OCCUPIED IN THE COMPUTATION OF THE TIME WORKED FOR THE EMPLOYER AND WITHOUT DEDUCTION OF WAGES IN RESPECT OF THE TIME SO OCCUPIED;

(c) FOR PERMITTING THE TRADE UNION THAT IS A PARTY TO OR IS BOUND BY THE AGREEMENT TO USE THE EMPLOYER'S PREMISES FOR THE PURPOSES OF THE TRADE UNION WITHOUT PAYMENT THEREFOR.

(2) NO TRADE UNION THAT IS A PARTY TO A COLLECTIVE AGREEMENT CONTAINING A PROVISION MENTIONED IN CLAUSE A OF SUBSECTION 1 SHALL REQUIRE THE EMPLOYER TO DISCHARGE AN EMPLOYEE BECAUSE,

(A) HE HAS BEEN EXPELLED OR SUSPENDED FROM MEMBERSHIP IN THE TRADE UNION; OR

(B) MEMBERSHIP IN THE TRADE UNION HAS BEEN DENIED TO OR WITHHELD FROM THE EMPLOYEE,

FOR THE REASON THAT THE EMPLOYEE,

(C) WAS OR IS A MEMBER OF ANOTHER TRADE UNION;

(D) HAS ENGAGED IN ACTIVITY AGAINST THE TRADE UNION OR ON BEHALF OF ANOTHER TRADE UNION;

(E) HAS ENGAGED IN REASONABLE DISSENT WITHIN THE TRADE UNION;

(F) HAS BEEN DISCRIMINATED AGAINST BY THE TRADE UNION IN THE APPLICATION OF ITS MEMBERSHIP RULES; OR

(G) HAS REFUSED TO PAY INITIATION FEES, DUES OR OTHER ASSESSMENTS TO THE TRADE UNION WHICH ARE UNREASONABLE.

10. AS WE UNDERSTAND COUNSEL'S ARGUMENT, IT APPEARS TO RUN ALONG THE FOLLOWING LINES. SECTION 3 LAYS DOWN A FUNDAMENTAL PRINCIPLE, NAMELY, THAT A PERSON SHOULD BE FREE TO JOIN A UNION OF HIS OWN CHOICE. SECTION 35(1) RESTRICTS THIS CHOICE BY PERMITTING UNION SECURITY CLAUSES IN A COLLECTIVE AGREEMENT, AND THEN 35(2) CREATES AN EXCEPTION TO THIS RE-

STRICTION BY PROVIDING FOR JOB SECURITY IN THE CIRCUMSTANCES OUTLINED IN THE SUBSECTION. COUNSEL THEN SUGGESTED THAT SECTION 35(2) WAS DESIGNED TO PROTECT AN EMPLOYEE WHO PREFERRED ONE UNION TO ANOTHER AND WANTED TO PROTECT HIS ALLEGIANCE TO THAT UNION, EVEN IF THE OTHER UNION WAS THE BARGAINING AGENT. HE ALSO SUBMITTED THAT CLAUSES (E), (F) AND (G) OF SUBSECTION 2 OF SECTION 35, WHICH WERE ADDED TO THE ACT AT THE SAME TIME AS SECTION 35A, WERE DESIGNED TO PROVIDE MORE FREEDOM TO AN EMPLOYEE OWING ALLEGIANCE TO ONE UNION, THOUGH HAVING TO BE A MEMBER OF ANOTHER. COUNSEL THEN TURNED HIS ATTENTION TO SECTION 35A WHICH, HE SUBMITTED, INTRODUCED A NEW CONCEPT INTO THE ACT, FREEDOM FROM COMPULSION. THIS SECTION, IN COUNSEL'S VIEW, WAS DESIGNED FOR A BROAD NEW CLASS OF PEOPLE WHO DO NOT WANT TO HAVE ANYTHING TO DO WITH UNIONS AT ALL. OF COURSE, THIS ARGUMENT DOES NOT STAND UP UNLESS "A TRADE UNION" IN CLAUSES (A) AND (B) OF SECTION 35A(1) MEANS "ANY TRADE UNION". COUNSEL ARGUED THAT IT SHOULD BE SO CONSTRUED BECAUSE, IF IT DOES NOT MEAN "ANY TRADE UNION" THEN AN EMPLOYEE GETS A DOUBLE PROTECTION, FIRSTLY FROM SECTION 35(2) AND THEN FROM SECTION 35A(1). THIS DOUBLE PROTECTION, IF WE UNDERSTOOD COUNSEL CORRECTLY, STEMS FROM THE FACT THAT IF "A TRADE UNION" IN CLAUSES (A) AND (B) OF SECTION 35A(1) IS CONSTRUED TO MEAN "THE TRADE UNION" IN THE LATTER PART OF THE SECTION, THAT IS, THE ONE PARTY TO THE COLLECTIVE AGREEMENT, THEN SECTION 35A PROTECTS AN EMPLOYEE FROM "THE TRADE UNION" AND SO DOES SECTION 35(2). IN OTHER WORDS, SECTION 35(2) PROTECTS AN EMPLOYEE FROM "THE TRADE UNION" THAT HAS MADE AN AGREEMENT CONTAINING UNION SECURITY CLAUSES PERMITTED BY SECTION 35(1)(A) OF THE ACT. PUT ANOTHER WAY, IF "A" DOES NOT MEAN "ANY" IN SECTION 35A(1), THEN AN EMPLOYEE IS PROTECTED AGAINST THE SAME TRADE UNION, NOT ONLY IN REGARDS TO DUALISM, OPPOSITION TO AND DISCRIMINATION AGAINST HIM BY THE TRADE UNION, BUT HE IS ALSO PROTECTED FROM HAVING TO JOIN THE TRADE UNION BECAUSE OF HIS RELIGIOUS BELIEF. IF ON THE OTHER HAND "A" IS CONSTRUED TO MEAN "ANY", THEN THIS DOUBLE PROTECTION CEASES BECAUSE SECTION 35(2) PROTECTS FROM "THE TRADE UNION", WHILE SECTION 35A(1) PROTECTS AGAINST ALL TRADE UNIONS.

11. PERHAPS THE FIRST ANSWER TO THIS ARGUMENT IS WHY SHOULD THE ACT NOT BE INTERPRETED IN SUCH A MANNER AS TO AFFORD "DOUBLE PROTECTION" FOR A GROUP OF EMPLOYEES. COUNSEL CITED NO CASES TO SUPPORT HIS CONTENTION THAT A STATUTE OUGHT NOT TO BE CONSTRUED SO AS TO AFFORD DOUBLE PROTECTION. SUCH AN INTERPRETATION DOES NOT LEAD TO A VIOLATION OF ANY OF THE ORDINARY CANNONS OF CONSTRUCTION SUCH AS RENDERING WORDS IN A STATUTE NUGATORY OR ABSURD. IN FACT, COUNSEL FOR THE APPLICANT ARGUED JUST THE CONTRARY. IN HIS VIEW, TO READ "A" AS "ANY" WOULD BE TO DEPART FROM THE GOLDEN RULE OF STATUTORY INTERPRETATION THAT WORDS IN A STATUTE SHOULD BE GIVEN THEIR PLAIN AND ORDINARY MEANING, ABSENT SOME OTHER COMPELLING REASON CONTAINED IN THE STATUTE. IT SHOULD ALSO BE POINTED OUT THAT OTHER SECTIONS OF THE ACT ARE OVERLAPPING AND DO IN FACT GIVE DOUBLE PROTECTION. THUS, A

REMEDY EXISTS BOTH UNDER SECTION 68 AND SECTION 107 IN CONNECTION WITH UNLAWFUL STRIKES OR LOCK-OUTS IN THE CONSTRUCTION INDUSTRY AND ALSO UNDER SECTION 69.

12. ANOTHER MAJOR FLAW IN THE ARGUMENT IS THAT SECTION 35(2) DOES NOT PROTECT AN EMPLOYEE FROM "THE TRADE UNION". UNDER SECTION 35(2) AN EMPLOYEE MUST STILL JOIN THE TRADE UNION AND FAILURE TO DO SO IS STILL A GROUND FOR DISCHARGE UNDER A SECTION 35(1)(A) TYPE OF AGREEMENT, NOTWITHSTANDING SECTION 35(2). THUS THE EMPLOYEE IS NOT PROTECTED FROM JOINING THE TRADE UNION UNDER SECTION 35(2) ALTHOUGH HE IS SO PROTECTED UNDER SECTION 35A(1). THEREFORE THERE IS REALLY NO DOUBLE PROTECTION AFFORDED BY SECTION 35A(1) IF "A" IS NOT CONSTRUED TO MEAN "ANY". PUT ANOTHER WAY, THE TWO SECTIONS ARE REALLY DEALING WITH DIFFERENT TYPES OF PROTECTION. SECTION 35(2) PROTECTS AN EMPLOYEE FROM BEING DISCHARGED WHERE HE HAS BEEN EXPELLED FROM MEMBERSHIP OR DENIED MEMBERSHIP IN A TRADE UNION BECAUSE OF THE REASONS SET OUT IN CLAUSES (A) TO (G) OF SUBSECTION 2. IN THESE CIRCUMSTANCES HE IS PROTECTED FROM THE ACTS OF THE TRADE UNION PARTY TO THE COLLECTIVE AGREEMENT. SECTION 35A PROTECTS AN EMPLOYEE FROM HIMSELF, THAT IS, WHERE HIS RELIGION BRINGS HIM INTO CONFLICT WITH THE UNION. TO OBTAIN THE PROTECTION OF SECTION 35(2) AN EMPLOYEE MUST HAVE BEEN A MEMBER WHO HAS BEEN EXPELLED OR AN EMPLOYEE SEEKING TO BE A MEMBER. THE EMPLOYEE HAS BEEN A MEMBER OR WANTS TO BE A MEMBER OF "THE TRADE UNION". IN THE CASE OF SECTION 35A(1) THE EMPLOYEE DOES NOT WANT TO BE A MEMBER OR DOES NOT WISH TO CONTINUE AS A MEMBER. THESE ARE DIFFERENT SITUATIONS AND THE PROTECTION AFFORDED BY EACH SECTION IS SURELY QUITE DIFFERENT AND IN NO REAL SENSE A DOUBLE PROTECTION, AS ARGUED BY COUNSEL FOR THE RESPONDENT. WE ARE THEREFORE NOT PREPARED TO DEPART FROM THE INTERPRETATION PLACED BY THE BOARD IN THE CORPORATION OF THE BOROUGH OF NORTH YORK CASE ON THE WORDS "A TRADE UNION" IN CLAUSES (A) AND (B) OF SECTION 35A(1). IT FOLLOWS, THEN, THAT THE FACT THAT NOBELS DOES NOT OBJECT TO JOINING ALL TRADE UNIONS DOES NOT IN ITSELF CONSTITUTE A BAR TO HIS APPLICATION.

13. WE TURN NOW TO DEAL WITH THE QUESTION OF NOBEL'S RELIGIOUS CONVICTION OR BELIEF. THE BOARD HAS DEALT AT LENGTH IN THE NORTH YORK CASE WITH THE MEANING OF THESE WORDS. ALTHOUGH COUNSEL FOR CUPE ARGUED THEY SHOULD BE GIVEN A NARROW INTERPRETATION, HE DID NOT DEVELOP HIS ARGUMENT AND CERTAINLY DID NOT ADVANCE ANY REASONS WHICH WOULD CAUSE US TO DEPART FROM WHAT WAS LAID DOWN IN THAT CASE. IN FACT, COUNSEL SUBSEQUENTLY APPEARED TO CONCEDE THAT A RELIGIOUS BELIEF NEED NOT BE RATIONAL OR LOGICAL OR CONSISTENT, ALTHOUGH HE SUBMITTED THAT THESE WERE FACTORS FOR TESTING THE SINCERITY OF THE BELIEF. COUNSEL'S MAIN ARGUMENT WAS THAT NOBEL'S BELIEF WAS FOUNDED ON IGNORANCE AND THAT THIS WAS FATAL TO THE APPLICATION. IN SUPPORT OF HIS ARGUMENT COUNSEL REFERRED TO THE FACT THAT NOBELS HAD NOT

READ THE CONSTITUTION OF CUPE UNTIL TWO DAYS BEFORE THE HEARING OF THE CASE, AND HE SUBMITTED THAT THERE WERE NO ACTIVITIES OF CUPE TO WHICH NOBELS IN FACT OBJECTED. IT WILL BE RECALLED THAT NOBELS' APPLICATION IS FOUNDED BOTH ON AN OBJECTION THAT CUPE'S CONSTITUTION IS NOT BASED ON THE BIBLE AND THAT ITS ACTIVITIES ARE SIMILARLY NOT SO BASED.

14. IN THE NORTH YORK CASE THE BOARD FOUND THAT THE APPLICANT FAILED TO ESTABLISH THAT HE HAD ANY KNOWLEDGE OF WHAT WAS IN THE UNION CONSTITUTION IN QUESTION AND THAT HIS CASE FAILED IN SO FAR AS IT WAS BASED ON HIS OBJECTION THAT THE SAID CONSTITUTION WAS NOT BASED ON THE BIBLE. THE BOARD POINTED OUT IN THAT CASE THAT THERE WAS NO EVIDENCE THE APPLICANT HAD BEEN DENIED ACCESS TO THE UNION CONSTITUTION, NOR WAS THERE EVIDENCE THAT THE APPLICANT HAD SECOND-HAND SOURCES OF INFORMATION CONCERNING THE CONTENTS OF THE CONSTITUTION. IN THE PRESENT CASE NOBELS TESTIFIED THAT, ALTHOUGH HE HAD ASKED DIFFERENT PEOPLE AT THE HOSPITAL TO SEE A CONSTITUTION, BOTH BEFORE AND AFTER MAKING THE APPLICATION, HE COULD NOT GET HOLD OF ONE. HE WAS TOLD "IT WAS NOT THERE". HE TESTIFIED, FURTHER, THAT EVEN THOUGH HE HAD NOT READ THE CONSTITUTION, HE KNEW IT WAS NOT FOUNDED ON THE BIBLE BECAUSE OF WHAT HE HAD READ IN THE GUIDE (A C.L.A.C. PUBLICATION) AND THE HAMILTON SPECTATOR ABOUT THE UNION AND THIS INFORMATION WAS NOT IN ACCORDANCE WITH HIS RELIGIOUS CONVICTIONS. IN SO FAR AS THE ACTIVITIES OF THE UNION TO WHICH NOBELS OBJECTED ARE CONCERNED, THOSE HAVE ALREADY BEEN DESCRIBED IN PARAGRAPH 6 ABOVE.

15. AS COUNSEL FOR NOBELS POINTED OUT IN HIS ARGUMENT, PERSONS LIKE NOBELS ARE IN AN ANOMALOUS POSITION. AS NON-MEMBERS OF A UNION IT IS NOT EASY FOR THEM TO GAIN ACCESS TO THE CONSTITUTION. AS NON-MEMBERS THEY MAY BE REFUSED ADMITTANCE TO UNION MEETINGS, AT ALL EVENTS REGULAR UNION MEETINGS. MOREOVER, BECAUSE OF THEIR OBJECTION AND BELIEF, IT DOES NOT SEEM REASONABLE THAT THEY SHOULD ATTEND SUCH MEETINGS, EVEN IF THEY COULD GAIN ADMITTANCE. IN THE RESULT, SUCH EMPLOYEES MAY HAVE TO RELY ON "SECOND-HAND" SOURCES FOR INFORMATION ABOUT A UNION. IN THIS CASE NOBELS ULTIMATELY DID READ THE CONSTITUTION AND THIS READING CONFIRMED WHAT HE HAD BEEN LED TO BELIEVE FROM OTHER SOURCES. WHILE HIS EVIDENCE RELATING TO HIS OBJECTION TO CUPE'S ACTIVITIES WAS LIMITED TO ONE SPECIFIC EXAMPLE, NAMELY THE TWO MEMBERS OF HIS CONGREGATION WHO QUIT THEIR JOBS RATHER THAN JOIN CUPE, THIS OCCURRENCE RESULTED FROM AN ACT OF THE UNION TO WHICH NOBELS TOOK THE STRONGEST EXCEPTION AND WAS EVIDENCE ON WHICH HE COULD FORM A BELIEF WITH RESPECT TO THE NATURE OF CUPE'S ACTIVITIES. THIS WOULD BE TRUE EVEN IF IT HAD BEEN SHOWN (AND IT WAS NOT) THAT THE LOCAL UNION INVOLVED IN THE BURLINGTON SCHOOL BOARD INCIDENT WAS DIFFERENT FROM THE ONE IN THIS CASE. IN ANY EVENT, THE VERY FACT THAT NOBELS HAS HAD TO MAKE THIS APPLICATION IS EVIDENCE THAT THE RESPONDENT UNION

IS ADOPTING THAT COMPULSION WHICH IS CONTRARY TO NOBEL'S RELIGIOUS CONVICTION OR BELIEF. FINALLY, IT MUST BE OBSERVED, IGNORANCE OR LACK OF KNOWLEDGE ARE FACTORS OR TESTS TO BE USED IN ASSESSING SINCERITY AND CREDIBILITY. IN THE PRESENT CASE NOBELS HAS STATED THAT IF HE HAS TO PAY DUES HE WILL QUIT HIS JOB. WE HAVE NO DOUBT IN OUR MINDS THAT HE WOULD DO JUST THAT AND THAT IF HIS DUES WERE NOT BEING HELD IN ESCROW, HE WOULD HAVE ALREADY RESIGNED. IN ALL THESE CIRCUMSTANCES, WE ARE SATISFIED THAT NOBELS HAD A SUFFICIENT FOUNDATION FOR HIS BELIEF AND, FURTHER, THAT IT IS A BELIEF THAT IS SINCERELY HELD.

16. ANOTHER ARGUMENT MADE BY COUNSEL FOR CUPE WAS THAT THE MAIN PURPOSE OF THE OBJECTION MUST BE RELIGIOUS AND THAT IT CANNOT BE COINCIDENTAL TO ANOTHER MAIN OBJECT. COUNSEL SUBMITTED THAT THE REAL REASON FOR THE PRESENT APPLICATION WAS THAT NOBELS AS A MEMBER OF THE C.L.A.C. WANTED THAT UNION TO REPRESENT HIM. IN ADDITION, IT WAS ARGUED THAT NOBEL'S OBJECTION TO CUPE WAS POLITICAL RATHER THAN RELIGIOUS. IN SUPPORT OF THIS LAST POINT COUNSEL REFERRED TO PARAGRAPH 3 OF EXHIBIT 2, WHICH READS:

WE ARE OPPOSED TO THE UNION AND ITS AFFILIATION WITH THE SOCIALIST, NDP-SUPPORTING CANADIAN LABOUR CONGRESS. OUR OPPOSITION STEMS FROM THE FACT THAT THE CLC AND ITS AFFILIATES, INCLUDING THE CANADIAN UNION OF PUBLIC EMPLOYEES, IN THEIR PRINCIPLES AND PRACTICES, FAIL TO ADHERE TO THE BIBLICAL PRINCIPLES THAT WE FEEL SHOULD GOVERN LABOUR RELATIONS.

EXHIBIT 2 WAS A COPY OF A LETTER SENT TO THE MANAGEMENT OF THE HOSPITAL ON APRIL 24, 1967. IT CAME ABOUT AS A RESULT OF CUPE'S ORGANIZATIONAL DRIVE AT THE HOSPITAL. DURING THIS DRIVE NOBELS OR ANOTHER EMPLOYEE CONTACTED AN ORGANIZATION KNOWN AS THE COMMITTEE FOR LIBERTY AND JUSTICE. THE EXECUTIVE SECRETARY OR DIRECTOR OF THAT ORGANIZATION IS ALSO THE EXECUTIVE SECRETARY OF THE C.L.A.C. A REPRESENTATIVE OF THE COMMITTEE PREPARED THE LETTER AND NOBELS SIGNED IT. ITS PURPOSE WAS TO REQUEST THE HOSPITAL NOT TO AGREE TO UNION SECURITY PROVISIONS IF BARGAINING WITH CUPE WERE TO TAKE PLACE. IT SEEMS TO US THAT, ALTHOUGH THE PARAGRAPH IN QUESTION INDICATED THAT NOBELS MAY BE OPPOSED TO SOCIALISM, IT ALSO INDICATES THAT THIS OPPOSITION STEMS FROM HIS RELIGIOUS BELIEFS. THIS WOULD APPEAR TO BE IN ACCORD WITH HIS TESTIMONY THAT HIS LIFE WAS COMMITTED TO CHRIST IN BODY AND SOUL. IN ANY EVENT, WE ARE UNABLE TO AGREE THAT THIS PARAGRAPH, WRITTEN IN 1967, SUPPORTS THE CONCLUSION THAT NOBEL'S MOTIVATION IN MAKING THIS APPLICATION WAS POLITICAL RATHER THAN RELIGIOUS. THE WHOLE TENOR OF THE EVIDENCE IS AGAINST THIS CONCLUSION.

17. WITH RESPECT TO COUNSEL'S OTHER ARGUMENT CONCERNING THE C.L.A.C., RELIANCE WAS PLACED ON THE FACT THAT NOBELS HAD JOINED THE C.L.A.C. ABOUT FOUR MONTHS PRIOR TO MAKING THIS APPLICATION, THAT HE WOULD LIKE THE C.L.A.C. TO BE HIS BARGAINING AGENT AND THAT THIS "WAS" OR "COULD BE" ONE OF THE REASONS FOR MAKING THE APPLICATION. WHILE IT SEEMS LIKELY THAT NOBELS WOULD PREFER TO HAVE THE C.L.A.C. AS HIS BARGAINING AGENT, WE FIND IT DIFFICULT IN THE LIGHT OF ALL THE EVIDENCE AS TO HIS RELIGIOUS BELIEFS TO SAY THAT THIS WAS THE MAIN REASON OR EVEN AS EQUALLY AN IMPORTANT REASON AS HIS RELIGIOUS BELIEF. NOBELS MAY HOPE THAT THIS SITUATION WILL COME ABOUT SOME DAY, BUT WE ARE SATISFIED THAT THE REASON HE IS PREPARED TO SACRIFICE HIS JOB RATHER THAN PAY DUES TO CUPE IS NOT BECAUSE HE PREFERS TO HAVE THE C.L.A.C. AS HIS BARGAINING AGENT, BUT BECAUSE IT IS AGAINST HIS RELIGIOUS BELIEF TO PAY DUES TO CUPE. IN ANY EVENT, IT IS DIFFICULT TO SEPARATE HIS PREFERENCE FOR THE C.L.A.C. FROM HIS RELIGIOUS BELIEF. HE WAS PREPARED TO JOIN AND PAY AN ANNUAL FEE TO THE C.L.A.C. BECAUSE ITS CONSTITUTION WAS BASED ON THE BIBLE AND BECAUSE IT PRACTISED CHRISTIAN PRINCIPLES. WE CONCLUDE, THEREFORE, THAT THE MAIN PURPOSE OF NOBEL'S OBJECTION IS BASED ON HIS RELIGIOUS CONVICTION OR BELIEF.

18. IT WAS NEXT ARGUED THAT AS A MATTER OF DISCRETION THE BOARD SHOULD REFUSE THE ORDER IN THIS CASE BECAUSE A RELIGIOUS OBJECTION CANNOT HAVE AS A CHARACTERISTIC A VIOLATION OF OTHER SECTIONS OF ACTS OF THE LEGISLATURE. THIS ARGUMENT STEMS FROM NOBEL'S EVIDENCE THAT HE HAD NO OBJECTION TO PAYING DUES TO THE C.L.A.C. BECAUSE IT PRACTICES CHRISTIAN PRINCIPLES AND THAT HE WAS MORE COMFORTABLE WITH SUCH A UNION BECAUSE THE MEMBERS WERE CHRISTIAN SO FAR AS HE WAS CONCERNED. HE TESTIFIED THAT HE WOULD NOT FEEL COMFORTABLE BELONGING TO A UNION THAT DID NOT HAVE 100 PER CENT CHRISTIAN MEMBERS. COUNSEL SUBMITTED THAT THIS EVIDENCE, ADDUCED IN CROSS-EXAMINATION, LED TO THE INFERENCE THAT NOBELS COULD ONLY JOIN A UNION HAVING 100 PER CENT CHRISTIAN MEMBERSHIP. WHILE WE ARE IN SOME DOUBT AS TO WHETHER NOBELS INTENDED TO GO THIS FAR, BECAUSE IN RE-EXAMINATION HE TESTIFIED THAT THERE WERE PERSONS IN THE C.L.A.C., OF WHICH HE IS A MEMBER, WHO WERE NOT CHRISTIANS, WE WILL ASSUME FOR PRESENT PURPOSES THAT COUNSEL IS CORRECT. IN SUPPORT OF HIS ARGUMENT COUNSEL REFERRED TO SECTION 10 OF THE LABOUR RELATIONS ACT, WHICH PROVIDES THAT "THE BOARD SHALL NOT CERTIFY A TRADE UNION...IF IT DISCRIMINATES AGAINST ANY PERSON BECAUSE OF HIS....CREED...", AND TO SECTION 4(2) OF THE ONTARIO HUMAN RIGHTS CODE, 1961-62 S.O. c. 93, AS AMENDED, WHICH PROVIDES THAT "NO TRADE UNION SHALL EXCLUDE FROM MEMBERSHIP OR SUSPEND ANY PERSON OR MEMBER BECAUSE OF RACE, CREED..." IT WAS COUNSEL'S SUBMISSION THAT NOBELS' CONVICTION RAN COUNTER TO THESE SECTIONS OF THE TWO ACTS.

19. WE ARE NOT PREPARED TO ACCEPT THIS ARGUMENT. IN THE FIRST PLACE, IT IS NOT A VIOLATION OF EITHER ACT FOR AN INDIVIDUAL TO HAVE SUCH A BELIEF. WHILE IT MAY BE THAT A PERSON HOLDING SUCH A BELIEF

WOULD NOT BE ABLE TO FIND A TRADE UNION OF THE KIND HE WOULD PREFER TO BELONG TO TO REPRESENT HIM OR, IF HE DID, THAT SUCH TRADE UNION COULD NOT BE CERTIFIED OR WOULD BE IN BREACH OF THE HUMAN RIGHTS CODE, THIS DOES NOT DETRACT FROM THE FACT THAT IT IS THAT PERSON'S BELIEF AND IT IS NOT UNLAWFUL TO HAVE SUCH A BELIEF. MOREOVER, IT IS READING TOO MUCH INTO THE SECTIONS RELIED ON TO SAY, AS COUNSEL DID, THAT THE LEGISLATURE "DOES NOT GO FOR THIS KIND OF RELIGIOUS BELIEF" IN AN INDIVIDUAL. AS COUNSEL FOR NOBELS POINTED OUT, SECTION 35A(1) IS NOT LIMITED IN ANY WAY. IT STATES QUITE SIMPLY "HIS RELIGIOUS CONVICTION OR BELIEF". WHILE, THEREFORE, WITHOUT IN ANY WAY GIVING APPROBATION TO SUCH A BELIEF, IF HELD, WE ARE UNABLE TO CONCLUDE THAT THIS IS A CASE IN WHICH WE SHOULD EXERCISE OUR DISCRETION AND REFUSE TO ISSUE AN ORDER. ONE FINAL OBSERVATION IS NECESSARY AT THIS POINT LEST ANY OF OUR REMARKS BE MISUNDERSTOOD. THERE IS NO EVIDENCE BEFORE US THAT SUGGESTS IN ANY WAY THAT THE C.L.A.C. IS IN VIOLATION OF EITHER OF THE SECTIONS WITH WHICH WE HAVE BEEN DEALING IN THIS ASPECT OF THE CASE.

20. THERE REMAINS FOR CONSIDERATION THE ARGUMENT THAT AN APPLICATION UNDER SECTION 35A(1) MUST BE THAT OF THE INDIVIDUAL AND THAT THE PRESENT APPLICATION WAS NOT NOBELS' BUT, RATHER, ONE BY THE C.L.A.C. AND THE COMMITTEE FOR JUSTICE AND LIBERTY. THIS ARGUMENT IS BASED ON THE EVIDENCE THAT A REPRESENTATIVE OF THE COMMITTEE PREPARED EXHIBIT 2 (THE 1967 LETTER), THAT NOBELS DID NOT PREPARE THE PRESENT APPLICATION WHICH WAS MAILED TO HIM PROBABLY BY A SOLICITOR, THAT NOBELS "THOUGHT" THE EXECUTIVE SECRETARY OF THE C.L.A.C. MADE IT UP AND THAT HE DID NOT RETAIN THE SOLICITOR WHO PRESENTED HIS CASE. WITH RESPECT TO EXHIBIT 2 IT SEEMS CLEAR THAT, ALTHOUGH IT WAS ACTUALLY DRAFTED BY A REPRESENTATIVE OF THE COMMITTEE, THIS WAS ONLY BECAUSE NOBELS AND OTHER EMPLOYEES WHO SIGNED THE LETTER SOUGHT THE ASSISTANCE OF THE COMMITTEE DURING THE CAMPAIGN BY CUPE. IN OTHER WORDS, THE LETTER RESULTED FROM THE INITIAL ACTION OF NOBELS AND FELLOW EMPLOYEES.

21. IN SO FAR AS THE PRESENT APPLICATION WAS CONCERNED, NOBELS TESTIFIED THAT IT WAS HIS IDEA TO FILE IT. HE HAD READ IN THE HAMILTON SPECTATOR THAT THE LAW WAS GOING TO BE CHANGED AND HE TALKED THIS OVER WITH TWO OTHER EMPLOYEES OF THE HOSPITAL AND THEY DECIDED TO GET INFORMATION FROM THE COMMITTEE FOR JUSTICE AND LIBERTY AND THE THREE OF THEM THEN WENT TO THE COMMITTEE. WHILE, ON THE EVIDENCE, IT WOULD SEEM TO BE A FAIR INFERENCE THAT NOBELS SECURED ASSISTANCE, FINANCIAL AND OTHERWISE, IN THE PREPARATION AND PRESENTATION OF HIS CASE FROM AT LEAST THE COMMITTEE, WE THINK THE EVIDENCE FALLS FAR SHORT OF LEADING TO THE CONCLUSION THAT THE APPLICATION IS NOT NOBELS'. AS COUNSEL FOR THE APPLICANT POINTED OUT, IT IS NOT UNUSUAL IN LABOUR RELATIONS MATTERS FOR EMPLOYEES TO SEEK ASSISTANCE, FINANCIAL AND OTHERWISE, IN PRESENTING THEIR CLAIMS BEFORE VARIOUS TRIBUNALS, INCLUDING THIS BOARD.

IN MANY INSTANCES, FOR EXAMPLE IN COMPLAINTS UNDER SECTION 65 OF THE ACT, THE COMPLAINANT IS NOT THE BARGAINING AGENT OF THE GRIEVOR. FURTHERMORE, WHEN ONE LOOKS TO THE REAL REASON FOR THE APPLICATION, THAT IS, NOBELS' EXPRESSED DESIRE TO RETAIN A JOB WHICH HE LIKES AND HAS HELD FOR NINE YEARS, BUT WHICH, ON THE OTHER HAND, HE IS PREPARED TO GIVE UP IF HE HAS TO PAY DUES TO CUPE, IT IS DIFFICULT TO SAY THAT THE APPLICATION IS NOT HIS. COUNSEL FOR CUPE SUBMITTED THAT, EVEN IF WE ARRIVED AT THIS CONCLUSION, IT WAS A BORDERLINE SITUATION AND WE SHOULD THEREFORE EXERCISE OUR DISCRETION AND REFUSE THE ORDER. WE SIMPLY CANNOT AGREE THAT IT IS BORDERLINE, BUT EVEN IF IT WERE, THIS WOULD NOT, IN OUR VIEW, JUSTIFY THE IMPOSITION OF "ECONOMIC MARTYRDOM" ON THE APPLICANT.

22. IN VIEWING THE EVIDENCE IN THIS CASE AS A WHOLE, ONE IS CONSTANTLY BROUGHT BACK TO THIS LAST MENTIONED FACT, NOBELS' WILLINGNESS TO SACRIFICE HIS JOB IN ORDER TO UPHOLD HIS BELIEF. NOBELS WAS THE ONLY WITNESS IN THE CASE AND WE HAVE NO REASON TO DOUBT ANY OF HIS EVIDENCE. HE WAS UNDOUBTEDLY SOMEWHAT NERVOUS AND AT TIMES HAD DIFFICULTY IN EXPRESSING HIMSELF CLEARLY. THIS MAY HAVE RESULTED IN PART FROM THE FACT THAT ENGLISH WAS NOT HIS MOTHER TONGUE AND, IN PART, FROM OUR DIFFICULTY IN UNDERSTANDING HIS BELIEF. HOWEVER, AS WAS POINTED OUT IN THE CORPORATION OF THE BOROUGH OF NORTH YORK CASE, THE REASONABLENESS OF THE BELIEF IS NOT A FACTOR THAT SHOULD INFLUENCE US IN DETERMINING WHETHER HE IN FACT HOLDS THE BELIEF. HAVING REGARD TO ALL THE EVIDENCE, THE REPRESENTATIONS OF COUNSEL AND IN THE LIGHT OF ALL THE FOREGOING CONSIDERATIONS, WE ARE SATISFIED THAT NOBELS, AN EMPLOYEE OF THE RESPONDENT HOSPITAL, BECAUSE OF HIS RELIGIOUS CONVICTION OR BELIEF, OBJECTS TO PAYING DUES OR OTHER ASSESSMENTS TO A TRADE UNION, NAMELY, THE RESPONDENT TRADE UNION, WHICH IS A PARTY TO A COLLECTIVE AGREEMENT WITH THE SAID HOSPITAL CONTAINING PROVISIONS OF THE TYPE MENTIONED IN CLAUSE (A) OF SUBSECTION 35 OF THE LABOUR RELATIONS ACT, NAMELY ARTICLES 6.4 AND 6.5, A COPY OF WHICH COLLECTIVE AGREEMENT WAS FILED AS EXHIBIT 1.

23. ACCORDINGLY, IT IS HEREBY ORDERED:

(1) THAT ARTICLES 6.4 AND 6.5 OF THE COLLECTIVE AGREEMENT BETWEEN THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL UNION No. 1065 AND JOSEPH BRANT MEMORIAL HOSPITAL OF THE BURLINGTON-NELSON HOSPITAL MADE THE 14TH DAY OF JANUARY, 1971, DO NOT APPLY TO JOHN RENSO NOBELS;

(2) THAT JOHN RENSO NOBELS IS NOT REQUIRED TO PAY ANY DUES, FEES OR ASSESSMENTS TO THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL UNION No. 1065;

PROVIDED THAT AMOUNTS EQUAL TO ANY DUES OR OTHER ASSESSMENTS ARE PAID BY JOHN RENSO NOBELS TO OR ARE REMITTED BY THE JOSEPH BRANT MEMORIAL HOSPITAL OF THE BURLINGTON-NELSON HOSPITAL TO A CHARITABLE ORGANIZATION MUTUALLY AGREED ON BY JOHN RENSO NOBELS AND THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL UNION No. 1065.

24. IT WAS AGREED BY COUNSEL THAT THE QUESTION OF THE CHARITABLE ORGANIZATION TO BE MUTUALLY AGREED ON OR DESIGNATED BY THE BOARD, AS THE CASE MAY BE, SHOULD BE DEALT WITH AFTER THE RELEASE OF THIS DECISION. IF NOBELS AND CUPE ARE UNABLE TO AGREE ON A CHARITABLE ORGANIZATION, THEN EACH SHOULD SO INFORM THE BOARD IN WRITING FORTHWITH AND SHOULD INCLUDE THEREIN ANY REPRESENTATIONS EACH MAY CARE TO MAKE AS TO THE CHARITABLE ORGANIZATION TO BE DESIGNATED BY THE BOARD. AS AT PRESENT ADVISED, THE BOARD SEES NO REASON TO PUT THE PARTIES TO THE EXPENSE OF A FURTHER HEARING ON THIS QUESTION.

DECISION OF BOARD MEMBER E. BOYER: JULY 26, 1971.

1. I DISSENT. IN THE CORPORATION OF THE BOROUGH OF NORTH YORK CASE, IT WAS MY FINDING THAT THE APPLICANT'S OBJECTION TO JOINING THE RESPONDENT TRADE UNION WAS BASED ON HIS CONVICTIONS ABOUT TRADE UNIONISM AND THAT THOSE OBJECTIONS WERE OF A NON-RELIGIOUS NATURE. THE EVIDENCE IN THE PRESENT CASE IS SIMILAR IN NATURE TO THAT IN THE NORTH YORK CASE, AND FOR THE REASONS WHICH I GAVE IN THAT CASE I WOULD FIND THAT NOBELS' OBJECTION TO JOINING AND PAYING DUES TO CUPE IS BASED ON HIS CONVICTIONS ABOUT TRADE UNIONISM AND IS OF A NON-RELIGIOUS NATURE.

2. ACCORDINGLY, I WOULD HAVE DISMISSED THE APPLICATION.

320-71-R: LOCAL 12-L, LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION (APPLICANT) v. WALTERS LITHOGRAPHING COMPANY LIMITED, YASHAR LITHOGRAPHING LIMITED, ONTARIO LITHOGRAPHING COMPANY LIMITED, KENNEDY GRAPHIC PLATES LIMITED, BURTCH LITHOGRAPHIC LIMITED AND TORONTO LITHOGRAPHING COMPANY LIMITED (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG, N. H. GRAY AND A. WHEATCROFT FOR THE APPLICANT, R. T. PAYTON, Q.C., FOR THE RESPONDENTS.

DECISION OF THE BOARD: JULY 19, 1971.

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3. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT COMPOSED OF ALL LITHOGRAPHERS, THEIR APPRENTICES AND HELPERS IN THE EMPLOY OF THE SIX NAMED RESPONDENT COMPANIES AT METROPOLITAN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN.

4. THE APPLICANT SUBMITS THAT THE SIX NAMED RESPONDENT CORPORATIONS ARE A SINGLE ENTERPRISE CARRYING ON BUSINESS "UNDER COMMON DIRECTION AND CONTROL" WITHIN THE MEANING OF SUBSECTION (4) OF SECTION 1 OF THE LABOUR RELATIONS ACT. THE APPLICANT THEREFORE CONTENDS THAT THE BOARD SHOULD TREAT ALL SIX RESPONDENTS AS CONSTITUTING ONE EMPLOYER FOR PURPOSES OF THE ACT.

5. ALL SIX RESPONDENT COMPANIES ARE HOUSED IN THE SAME ONE STOREY BUILDING AT 31 COMMISSIONER STREET IN TORONTO WHICH BUILDING BEARS A SIGN AND IS KNOWN AS GRAPHIC CENTRE. THERE ARE A NUMBER OF OTHER COMPANIES ALSO LOCATED IN THE SAME PREMISES. COUNSEL FOR THE APPLICANT ADVISED THE BOARD THAT THE APPLICANT WAS ONLY SEEKING CERTIFICATION FOR THOSE EMPLOYEES AT THE GRAPHIC CENTRE WHO WERE ENGAGED IN ALL PHASES OF LITHOGRAPHIC PRODUCTION. ACCORDING TO COUNSEL ONLY THE EMPLOYEES OF THE SIX NAMED COMPANIES PERFORM THIS WORK AND IT WAS ON THIS BASIS THAT THE SAID COMPANIES WERE NAMED AS RESPONDENTS. CONVERSELY, COUNSEL FOR THE APPLICANT CONTENDS THAT THE REMAINING COMPANIES LOCATED AT THE GRAPHIC CENTRE DO NOT DO WORK FALLING WITHIN THE AMBIT OF THE UNIT FOR WHICH THE APPLICANT IS SEEKING CERTIFICATION AND FOR THIS REASON THEY WERE NOT NAMED AS A PARTY TO THE APPLICATION. COUNSEL FOR THE RESPONDENTS DID NOT DISPUTE THE LATTER ASSERTION OF COUNSEL FOR THE APPLICANT.

6. COUNSEL FOR THE APPLICANT SUBMITS THAT IN PREVIOUS APPLICATIONS FOR CERTIFICATION MADE BY THE APPLICANT THE BOARD HAS FOUND THE SAME UNIT FOR WHICH THE APPLICANT IS APPLYING IN THE INSTANT CASE TO BE APPROPRIATE FOR COLLECTIVE BARGAINING. COUNSEL FURTHER SUBMITS THAT SUCH UNITS HAVE BEEN DESCRIBED BY THE BOARD IN IDENTICAL NOMENCLATURE TO THAT WHICH THE APPLICANT IS SEEKING IN THIS APPLICATION. MOREOVER, ACCORDING TO COUNSEL SUCH UNITS HAVE ENCOMPASSED EMPLOYEES ENGAGED IN BOTH LITHOGRAPHIC PREPARATORY AND PRINTING WORK. STATED ANOTHER WAY, COUNSEL FOR THE APPLICANT SUBMITS THAT THE BOARD HAS INCLUDED EMPLOYEES DOING LITHOGRAPHIC PREPARATORY WORK, I.E. OFFSET CAMERA WORK, STRIPPING AND PLATE MAKING, IN THE SAME UNIT WITH EMPLOYEES DOING OFFSET LITHOGRAPHIC PRINTING ON PRESSES DESIGNED FOR THAT PURPOSE. COUNSEL CITED A NUMBER OF PREVIOUS DECISIONS OF THE BOARD IN SUPPORT OF HIS SUBMISSION.

7. COUNSEL FOR THE RESPONDENTS ADVISED THE BOARD THAT WITH RESPECT TO THE QUESTION AS TO WHAT CONSTITUTES THE APPROPRIATE BARGAINING UNIT IN THE INSTANT CASE, THE RESPONDENTS WERE CONTENT TO RELY UPON THE PAST PRACTICE OF THE BOARD.

8. THE BOARD HAS REVIEWED THE PRIOR APPLICATIONS FOR CERTIFICATION MADE BY THE APPLICANT OVER THE PAST FIVE YEARS, INCLUDING THOSE CITED BY COUNSEL FOR THE APPLICANT. AN EXAMINATION OF THIS RECORD REVEALS THAT ON A NUMBER OF OCCASIONS THE BOARD HAS FOUND UNITS DESCRIBED IN LANGUAGE IDENTICAL TO THAT SOUGHT BY THE APPLICANT IN THE INSTANT CASE TO BE APPROPRIATE FOR COLLECTIVE BARGAINING. THE UNITS SO DESCRIBED, HOWEVER, HAVE NOT ALWAYS ENCOMPASSED EMPLOYEES IN THE SAME JOB CLASSIFICATIONS OR PERFORMING THE SAME WORK AS THOSE EMPLOYEES FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION IN THE INSTANT CASE. BY WAY OF EXAMPLE, IN THE MANERWOOD PRESS LIMITED CASE (SEPTEMBER 21, 1966 - BOARD FILE NO. 12190-66-R) WHILE THE UNIT FOUND TO BE APPROPRIATE WAS DESCRIBED IN TERMS OF "ALL LITHOGRAPHERS, THEIR APPRENTICES AND HELPERS" THE UNIT WOULD APPEAR TO COVER ONLY EMPLOYEES ENGAGED IN OFFSET LITHOGRAPHIC PRINTING. ON THE OTHER HAND, IN THE GRENLER GRAPHIC PRODUCTIONS LIMITED CASE (NOVEMBER 22, 1966 - BOARD FILE NO. 12387-66-R) ALTHOUGH THE IDENTICAL UNIT WAS FOUND TO BE APPROPRIATE IT WOULD APPEAR THAT THE UNIT ONLY COVERED EMPLOYEES ENGAGED IN LITHOGRAPHIC PREPARATORY WORK. IT APPEARS THAT THE DIFFERENT COVERAGE OF THE TWO IDENTICALLY WORDED CERTIFICATES REFLECTS THE DIFFERENT TYPE OF OPERATION CARRIED ON BY THE TWO COMPANIES. IN OTHER CERTIFICATES ISSUED BY THE BOARD, HOWEVER, WHERE THE BOARD FOUND A UNIT DESCRIBED IN TERMS OF "ALL LITHOGRAPHERS, THEIR APPRENTICES AND HELPERS" THE UNIT ENCOMPASSED EMPLOYEES ENGAGED IN ALL PHASES OF LITHOGRAPHIC PREPARATORY WORK AND PRINTING, I.E. CAMERAMEN, STRIPPERS, PLATEMAKERS, PRESSMEN, FEEDERS, THEIR APPRENTICES AND HELPERS (SEE DANFORTH PRESS LIMITED (MARCH 2, 1967 - BOARD FILE NO. 12730-66-R); MACLEAN-HUNTER PUBLISHING COMPANY LIMITED OLRB M.R. NOVEMBER 1967 P. 759; INLAND PUBLISHING CO., LIMITED OLRB M.R. DECEMBER 1968 P. 910).

9. IT IS FAIR TO SAY THAT WHERE AN EMPLOYER IS ENGAGED IN BOTH LITHOGRAPHIC PREPARATORY AND PRINTING WORK AND THE APPLICANT HAS SOUGHT CERTIFICATION FOR A UNIT ENCOMPASSING EMPLOYEES ENGAGED IN BOTH THE ABOVE PHASES OF LITHOGRAPHIC PRODUCTION, THE BOARD HAS FOUND A SINGLE UNIT COVERING ALL OF THE SAID EMPLOYEES TO BE APPROPRIATE FOR COLLECTIVE BARGAINING. ASSUMING, THEN, FOR THE MOMENT THAT THE BOARD WERE TO FIND THAT THE SIX RESPONDENT COMPANIES SHOULD BE TREATED AS A SINGLE EMPLOYER, WE ARE SATISFIED THAT THE UNIT OF EMPLOYEES FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION IS AN APPROPRIATE UNIT FOR COLLECTIVE BARGAINING.

10. WE WOULD DEAL NOW WITH THE ISSUE AS TO WHETHER THE SIX NAMED RESPONDENT COMPANIES FALL WITHIN THE PURVIEW OF SECTION 1(4) OF THE LABOUR RELATIONS ACT. SUBSECTION (4) OF SECTION 1 READS:

WHERE, IN THE OPINION OF THE BOARD,
ASSOCIATED OR RELATED ACTIVITIES OR BUS-
INESSES ARE CARRIED ON BY OR THROUGH MORE

THAN ONE CORPORATION, INDIVIDUAL, FIRM, SYNDICATE OR ASSOCIATION, OR ANY COMBINATION THEREOF, UNDER COMMON CONTROL OR DIRECTION, THE BOARD MAY TREAT THE CORPORATIONS, INDIVIDUALS, FIRMS, SYNDICATES OR ASSOCIATIONS OR ANY COMBINATION THEREOF AS CONSTITUTING ONE EMPLOYER FOR THE PURPOSES OF THIS ACT.

11. AS HAS ALREADY BEEN MENTIONED, ALL SIX COMPANIES OCCUPY SPACE IN THE SAME PREMISES AT 31 COMMISSIONER STREET IN TORONTO. WILFRED WALTERS OWNS THE ONE STOREY BUILDING AND HE PERSONALLY RENTS IT TO GRAPHIC CENTRE WHICH IS A TRADE NAME UNDER WHICH ONTARIO LITHOGRAPHING COMPANY LIMITED (HEREINAFTER REFERRED TO AS ONTARIO LITHOGRAPHING) CARRIES ON BUSINESS. GRAPHIC CENTRE IS THE NAME WHICH APPEARS ON THE ENTRANCE TO THE BUILDING AND IS THE NAME BY WHICH THE OPERATIONS CARRIED ON IN THE PREMISES ARE KNOWN TO THE PUBLIC. GRAPHIC CENTRE IN TURN RENTS SPACE IN THE BUILDING TO EACH OF THE SIX RESPONDENT COMPANIES.

12. THE FIVE NAMED RESPONDENT LITHOGRAPHING COMPANIES CARRY ON OFFSET LITHOGRAPHIC PRINTING OPERATIONS. EACH OF THE COMPANIES OWNS ONE OR MORE OFFSET LITHOGRAPHIC PRESSES. THERE IS A COMMON PRESS AREA WHERE A MAJORITY OF THE PRESSES ARE LOCATED. THE REMAINDER OF THE PRESSES ARE LOCATED IN OTHER ADJACENT AREAS OF THE PLANT. ALL OF THE PRESSES, HOWEVER, BY AND LARGE ARE LOCATED IN OPEN AREAS. THERE IS NO VISIBLE WAY OF IDENTIFYING WHICH PRESSES BELONG TO ANY PARTICULAR COMPANY. THERE ARE NO SOLID WALLS ENCLOSING THE PRESSES OR SPACE RENTED BY EACH OF THE PRINTING COMPANIES. MOREOVER, THERE ARE NO SIGNS IN THE PLANT WHICH GIVE ANY INDICATION OF THE PRESENCE OF THE FIVE SEPARATE CORPORATE ENTITIES.

13. THERE IS ONLY ONE PART OF THE PLANT PRODUCTION AREA THAT IS ENCLOSED BY WALLS AND THAT IS THE PREMISES OCCUPIED BY KENNEDY GRAPHIC PLATES LIMITED (HEREINAFTER REFERRED TO AS KENNEDY GRAPHIC). KENNEDY GRAPHIC IS ENGAGED EXCLUSIVELY IN OFFSET LITHOGRAPHIC PREPARATORY WORK. THIS INVOLVES FILM PROCESSING AND PLATE MAKING. BECAUSE OF THE NATURE OF THE WORK, THE AREA WHERE IT IS DONE MUST BE KEPT FREE FROM DUST. IT IS FOR THIS REASON THAT THE PREPARATORY AREA IS ENCLOSED.

14. WALTERS LITHOGRAPHING COMPANY LIMITED CARRIES ON ITS PRINTING BUSINESS UNDER THE TRADE NAME OF RAPID LITHO. ACCORDING TO THE REPLY FILED BY THE COMPANY, THE GENERAL NATURE OF THE COMPANY'S BUSINESS IS THE MULTI-LITHING OF FORMS. THE REPLY FILED BY YASHAR LITHOGRAPHING LIMITED STATES THAT THE GENERAL NATURE OF THAT COMPANY'S BUSINESS IS THE MULTI-LITHING OF OFFICE STATIONERY. THE REPLY OF ONTARIO LITHOGRAPHING INDICATES THAT THE GENERAL NATURE OF THAT COM-

PANY'S BUSINESS IS THE LITHOGRAPHING OF LABELS. ACCORDING TO THE REPLY OF TORONTO LITHOGRAPHING COMPANY LIMITED, THE GENERAL NATURE OF THAT COMPANY'S BUSINESS IS THE LITHOGRAPHING OF CATALOGUES AND BROCHURES. THE REPLY OF BURTCH LITHOGRAPHIC LIMITED INDICATES THE GENERAL NATURE OF THAT COMPANY'S BUSINESS IS BOARD PRINTING. THE FIVE COMPANIES EACH OWNS THE PARTICULAR MODEL OF PRESS OR PRESSES BEST SUITED TO THE PARTICULAR TYPE OF PRINTING WORK PRIMARILY DONE BY EACH OF THEM. ALL OF THE PRESSES, HOWEVER, CAN BE AND ARE USED TO DO A VARIETY OF PRINTING JOBS.

15. THERE IS A SINGLE UNIFIED SALES FORCE AT THE GRAPHIC CENTRE COMPOSED OF FOUR SALESMEN WORKING UNDER A SALES MANAGER. THE SALES STAFF HAS THEIR OWN SEPARATE OFFICE AREA AT 31 COMMISSIONER STREET. ORDERS SECURED FROM CUSTOMERS ARE TAKEN IN THE NAME OF ONE OR OTHER OF THE FIVE PRINTING COMPANIES. THE COSTS AND PROFIT ON EACH SALES CONTRACT ARE CHARGED AGAINST THE ACCOUNTS OF THE DESIGNATED COMPANY. THE ACTUAL WORK ON ANY PARTICULAR CONTRACT IS NOT NECESSARILY DONE ON THE PRESSES OF THE COMPANY WITH THE CONTRACT NOR IS THE WORK NECESSARILY PERFORMED BY THE EMPLOYEES OF THAT PARTICULAR COMPANY. FOR INSTANCE, IF A CUSTOMER CONTRACT IS TAKEN IN THE NAME OF ONE COMPANY AND THE PRESSES OF THAT COMPANY ARE ALREADY ENGAGED, THE WORK WOULD BE ALLOCATED TO AN AVAILABLE PRESS OWNED BY ANOTHER COMPANY. SIMILARLY, IF THE PRESSMEN EMPLOYED BY THE COMPANY WITH A CONTRACT ARE OTHERWISE ENGAGED, THEN PRESSMEN EMPLOYED BY ANOTHER COMPANY MIGHT BE ASSIGNED TO DO THE WORK ON PRESSES OWNED BY THE COMPANY WITH THE CONTRACT. BY WAY OF EXAMPLE, UNTIL VERY RECENTLY YASHAR LITHOGRAPHING HAD NO EMPLOYEES OF ITS OWN. WHEN THAT COMPANY SECURED A CUSTOMER CONTRACT THE WORK WAS ALWAYS PERFORMED BY EMPLOYEES OF ONE OF THE OTHER COMPANIES. IN OTHER WORDS, THERE IS A REGULAR INTERCHANGE OF EMPLOYEES AMONG THE FIVE PRINTING COMPANIES DESIGNED TO ACHIEVE MAXIMUM UTILIZATION OF BOTH EMPLOYEES AND PRESSES. BECAUSE OF THE ENTIRELY DIFFERENT NATURE OF THE PREPARATORY WORK PERFORMED BY THE EMPLOYEES OF KENNEDY GRAPHIC, THERE IS NO INTERCHANGE OF ITS EMPLOYEES AND THE EMPLOYEES OF THE PRINTING COMPANIES. KENNEDY GRAPHIC, HOWEVER, DOES VIRTUALLY ALL OF THE OFFSET LITHOGRAPHIC PREPARATORY WORK ON THE CUSTOMER CONTRACTS OF THE FIVE PRINTING COMPANIES.

16. IN ADDITION TO THE COMMON SALES STAFF, THERE ARE OTHER COMMON FACILITIES USED BY ALL SIX RESPONDENT COMPANIES. MORE PARTICULARLY, THERE IS ONE BINDERY SERVICE FOR ALL OF THE COMPANIES AND COMMON STORAGE AREAS AND SHIPPING AND RECEIVING FACILITIES. THERE IS A COMMON MAINTENANCE STAFF. THERE ARE ALSO COMMON WASHROOM FACILITIES. AS WELL THERE ARE THREE TIME CLOCKS WHICH ARE USED BY ALL EMPLOYEES, THE PARTICULAR CLOCK WHICH THEY USE BEING DEPENDENT ON THE LOCATION OF THEIR WORK STATIONS. THERE IS A COMMON PHONE NUMBER UNDER THE NAME OF GRAPHIC CENTRE AND A SINGLE RECEPTIONIST FOR ALL SIX COMPANIES. THERE ARE COMMON OFFICE, BOOKKEEPING AND ACCOUNTING FACILITIES.

ALTHOUGH THERE ARE SEPARATE PAYROLLS FOR EACH COMPANY THE EMPLOYEES ARE ALL PAID BY CHEQUES IN THE NAME OF GRAPHIC CENTRE.

17. WILFRED WALTERS IS A DIRECTOR AND PRESIDENT OF WALTERS LITHOGRAPHING, ONTARIO LITHOGRAPHING, TORONTO LITHOGRAPHING AND KENNEDY GRAPHIC AND HE OWNS ALL OF THE SHARES OF THE LATTER THREE COMPANIES. THE COMMON SHARES OF WALTERS LITHOGRAPHING ARE HELD BY A TRUST COMPANY AS TRUSTEE FOR THE CHILDREN OF WILFRED WALTERS. WALTERS, HOWEVER, OWNS ALL OF THE PREFERRED SHARES OF THE COMPANY. DOROTHY WALTERS, THE WIFE OF WILFRED WALTERS, IS THE VICE-PRESIDENT OF THE ABOVE FOUR COMPANIES. WILFRED WALTERS ALSO OWNS HALF THE SHARES OF YASHAR LITHOGRAPHING AND IS THE VICE-PRESIDENT OF THAT COMPANY. THE OTHER HALF OF THE SHARES IS OWNED BY SULI YASHAR WHO IS THE PRESIDENT OF THE COMPANY. WILFRED WALTERS OWNS A THIRD OF THE SHARES OF BURTCH LITHOGRAPHIC AND IS A VICE-PRESIDENT OF THE COMPANY. THE REMAINING TWO-THIRDS OF THE SHARES ARE EVENLY DIVIDED BETWEEN RONALD BURTCH, WHO IS THE PRESIDENT OF THE COMPANY, AND DOUGLAS MILNE, WHO IS ALSO A VICE-PRESIDENT. WALTERS TESTIFIED THAT RATHER THAN HIRE SULI YASHAR AND RONALD BURTCH AS EMPLOYEES, HE DECIDED TO INCORPORATE THE TWO COMPANIES AND GIVE YASHAR, BURTCH AND MILNE AN OWNERSHIP INTEREST IN THEM. HE ALSO MADE YASHAR, BURTCH AND MILNE OFFICERS IN THE COMPANIES. MARGIT GIERER IS THE SECRETARY OF ALL SIX COMPANIES.

18. RONALD BURTCH IS A NON-WORKING FOREMAN RESPONSIBLE FOR THE DAY TO DAY SUPERVISION OF THE OFFSET LITHOGRAPHIC PREPARATORY OPERATIONS OF KENNEDY GRAPHIC. ROBERT RALPH ACTS IN THE SAME CAPACITY WITH REGARD TO THE OPERATIONS OF THE FIVE PRINTING COMPANIES. DOUGLAS MILNE IS THE PRODUCTION MANAGER IN CHARGE OF ALL OF THE PRODUCTION OPERATIONS OF THE SIX RESPONDENT COMPANIES. MILNE DISTRIBUTES, SCHEDULES AND CO-ORDINATES ALL OF THE PRODUCTION WORK. IT WOULD APPEAR FROM THE EVIDENCE THAT SULI YASHAR AND WILFRED WALTERS BOTH ACT IN THE CAPACITY OF GENERAL MANAGER OVER THE OPERATIONS OF ALL OF THE RESPONDENTS. YASHAR HAS PARTICULAR RESPONSIBILITY FOR DOING THE COSTING FOR ALL OF THE COMPANIES. WILFRED WALTERS, HOWEVER, EXERCISES EFFECTIVE CONTROL OVER ALL ASPECTS OF THE BUSINESSES CARRIED ON BY THE SIX COMPANIES INCLUDING SALES. MORE SPECIFICALLY, HE GIVES ADVICE WITH RESPECT TO BOTH THE FINANCIAL AND TECHNICAL ASPECTS OF THE COMPANIES' OPERATIONS AND HAS THE FINAL DECISION MAKING AUTHORITY OVER THESE AREAS OF THE COMPANIES' OPERATIONS. IN THE EXERCISE OF THIS AUTHORITY, WALTERS CONSULTS WITH AND RELIES ON THE ASSISTANCE AND ADVICE OF THE OTHER MEMBERS OF THE MANAGEMENT TEAM REFERRED TO ABOVE. IN THE CASE OF YASHAR LITHOGRAPHING AND BURTCH LITHOGRAPHIC, HE WOULD ONLY MAKE DECISIONS AFFECTING THESE COMPANIES IN CONJUNCTION WITH AND WITH THE APPROVAL OF THE OTHER MEMBERS OF MANAGEMENT WITH AN OWNERSHIP INTEREST. IT WOULD BE ACCURATE TO SAY, HOWEVER, THAT IN THE LAST ANALYSIS ALL DECISIONS RELATING TO POLICY MATTERS AFFECTING THE SIX RESPONDENT COMPANIES REST WITH WALTERS.

19. ALL OF THE EMPLOYEES OF THE SIX RESPONDENT COMPANIES ARE PAID UNIFORM WAGE RATES ACCORDING TO THEIR JOB CLASSIFICATION. UNIFORM WORKING CONDITIONS AND HOURS OF WORK ALSO PREVAIL THROUGHOUT THE PLANT AMONG THESE EMPLOYEES. MOREOVER, DIRECTIVES FROM MANAGEMENT RELATING TO WORKING CONDITIONS ARE CIRCULATED AMONG ALL OF THE EMPLOYEES AND ARE EQUALLY APPLICABLE TO THEM. WITH RESPECT TO THE HIRING OF EMPLOYEES, BURTCH AND RALPH, AS THE RESPECTIVE IMMEDIATE SUPERVISORS OF THE PREPARATORY AND PRINTING OPERATIONS, WOULD MAKE RECOMMENDATIONS CONCERNING ANY ADDITIONAL STAFF REQUIREMENTS TO ONE OR OTHER OF THE THREE MORE SENIOR MEMBERS OF MANAGEMENT, I.E. MILNE, YASHAR AND WALTERS. THE ACTUAL DECISION TO HIRE A NEW EMPLOYEE OR EMPLOYEES WOULD APPEAR TO BE MADE AS A JOINT MANAGEMENT DECISION. THE QUALIFICATIONS OF ANY CANDIDATE FOR A JOB ARE JUDGED BY THE TWO NON-WORKING FOREMEN BECAUSE OF THEIR PARTICULAR EXPERTISE. THE POWER TO APPROVE OR VETO THE HIRING OF NEW EMPLOYEES, HOWEVER, WOULD SEEM TO LIE WITH YASHAR AND WALTERS. WHILE WE HAVE NO DIRECT EVIDENCE CONCERNING THE DISCHARGE OF EMPLOYEES, IT IS REASONABLE TO ASSUME THAT THE LINE OF AUTHORITY WOULD BE THE SAME AS FOR THE HIRING OF NEW EMPLOYEES.

20. BEFORE THE BOARD CAN EXERCISE ITS DISCRETION AND TREAT THE SIX RESPONDENTS AS A SINGLE EMPLOYER, IT MUST BE SATISFIED THAT THE BUSINESSES OF THE SIX COMPANIES ARE CARRIED ON UNDER COMMON DIRECTION AND CONTROL. SINCE THIS IS ONE OF THE FIRST CASES IN WHICH AN APPLICANT HAS REQUESTED THAT THE BOARD TREAT MORE THAN ONE CORPORATION WHICH CARRIES ON RELATED ACTIVITIES OR BUSINESSES AS ONE EMPLOYER, THE BOARD DEEMS IT DESIRABLE TO INDICATE SOME OF THE CRITERIA WHICH IT CONSIDERS RELEVANT IN MAKING SUCH A DETERMINATION AS A GUIDE IN FUTURE CASES. IN SETTING OUT CRITERIA OR INDICIA, WE DO NOT INTEND THAT THOSE SPECIFICALLY LISTED ARE THE ONLY ONES WHICH THE BOARD WOULD BE PREPARED TO TAKE INTO ACCOUNT. MOREOVER, THE WEIGHT WHICH THE BOARD WOULD PLACE ON ANY ONE OF THE INDICIA WILL OF COURSE BE DEPENDENT UPON THE TOTAL FACT SITUATION IN ANY INDIVIDUAL CASE.

21. THE INDICIA OR CRITERIA WHICH THE BOARD CONSIDERS RELEVANT IN MAKING A DETERMINATION AS TO WHETHER THE ACTIVITIES OR BUSINESSES OF ONE OR MORE CORPORATIONS, INDIVIDUALS, FIRMS, SYNDICATES OR ASSOCIATIONS, OR ANY COMBINATION THEREOF ARE CARRIED ON UNDER COMMON DIRECTION AND CONTROL AND THEREFORE MAY BE TREATED AS ONE EMPLOYER ARE -- (1) COMMON OWNERSHIP OR FINANCIAL CONTROL, (2) COMMON MANAGEMENT, (3) INTERRELATIONSHIP OF OPERATIONS, (4) REPRESENTATION TO THE PUBLIC AS A SINGLE INTEGRATED ENTERPRISE, AND (5) CENTRALIZED CONTROL OF LABOUR RELATIONS. NO SINGLE CRITERION IS LIKELY TO DECIDE THE ISSUE. RATHER, AS HAS BEEN STATED, THE BOARD'S DETERMINATION UNDOUBTEDLY WILL BE BASED ON AN APPRAISAL OF ALL OF THEM IN THE LIGHT OF THE PARTICULAR FACTS BEFORE IT. IT HARDLY NEED BE SAID THAT IN APPLYING THE ABOVE CRITERIA, THE GREATER THE DEGREE OF FUNCTIONAL

COHERENCE AND INTERDEPENDENCE WHICH THE BOARD FINDS AMONG THE ASSOCIATED OR RELATED ACTIVITIES AND BUSINESSES THE MORE PROBABLE IT IS THAT THE BOARD WILL CONCLUDE THAT THE ENTITIES CARRYING ON THESE ACTIVITIES SHOULD BE TREATED AS ONE EMPLOYER. WE WOULD MENTION HERE ALSO THAT THE INDICIA OR CRITERIA THEMSELVES OBVIOUSLY OVERLAP. FOR THAT REASON, IN APPLYING THEM TO THE FACTS OF THE INSTANT CASE WE HAVE NOT ATTEMPTED TO DEAL WITH EACH CRITERION ON AN INDIVIDUAL BASIS.

22. WILFRED WALTERS, IN ESSENCE, IS THE SOLE OWNER OF ONTARIO LITHOGRAPHING, TORONTO LITHOGRAPHING, KENNEDY GRAPHIC AND WALTERS LITHOGRAPHING. MOREOVER, WALTERS EXERCISES FINANCIAL CONTROL OVER THESE COMPANIES. THE FOUR COMPANIES, IN FACT, ARE FAMILY ENTERPRISES AND WALTERS IS THE DOMINANT "FATHER" FIGURE. ALTHOUGH HIS WIFE IS A DIRECTOR AND VICE-PRESIDENT OF THE COMPANIES SHE WOULD APPEAR TO HOLD THESE POSITIONS FOR REASONS OF LEGAL REQUIREMENTS AND/OR CORPORATE REGULATIONS. SHE EXERCISES NO REAL AUTHORITY, HOWEVER, IN HER OWN RIGHT. IN THE CASE OF YASHAR LITHOGRAPHING AND BURTCH LITHOGRAPHIC, WHILE WALTERS HAS ONLY A HALF OWNERSHIP INTEREST IN THE FORMER COMPANY AND ONLY A THIRD OWNERSHIP INTEREST IN THE LATTER COMPANY IT WAS WALTERS' DECISION TO INCORPORATE THE TWO COMPANIES. ALSO IT WAS WALTERS' DECISION TO GIVE YASHAR, BURTCH AND MILNE AN OWNERSHIP INTEREST IN THE COMPANIES. AGAIN, IT WAS WALTERS WHO WAS RESPONSIBLE FOR MAKING THEM OFFICERS OF THE COMPANIES. YASHAR AS PRESIDENT OF YASHAR LITHOGRAPHING AND BURTCH AS PRESIDENT AND MILNE AS VICE-PRESIDENT OF BURTCH LITHOGRAPHIC EXERCISE THE TYPE OF MANAGERIAL AUTHORITY GENERALLY ASSOCIATED WITH THEIR OFFICES. HOWEVER, IT IS APPARENT FROM WALTERS' TESTIMONY THAT HE EXERCISES AN OVERALL POLICY MAKING FUNCTION WITH RESPECT TO THE OPERATIONS OF BOTH COMPANIES.

23. ALL SIX RESPONDENT COMPANIES ARE HOUSED IN THE SAME BUILDING AT 31 COMMISSIONER STREET, WHICH IS PERSONALLY OWNED BY WALTERS. EACH OF THE COMPANIES RENTS SPACE UNDER LEASING ARRANGEMENTS WITH GRAPHIC CENTRE. GRAPHIC CENTRE, AS HAS BEEN MENTIONED, IS A TRADE NAME UNDER WHICH ONTARIO LITHOGRAPHING CARRIES ON BUSINESS. AS WAS NOTED EARLIER, THE LATTER COMPANY IS WHOLLY OWNED BY WALTERS. IT IS READILY APPARENT THAT, NOTWITHSTANDING THE ABOVE CORPORATE FACADE, IT IS WALTERS, IN EFFECT, WHO HOLDS THE LEASES FOR THE PREMISES OCCUPIED BY THE SIX RESPONDENT COMPANIES.

24. IN ADDITION TO SHARING COMMON PREMISES, THE RESPONDENT COMPANIES SHARE COMMON OFFICE, BOOKKEEPING, ACCOUNTING, SALES, MAINTENANCE, BINDERY, STORAGE, SHIPPING AND RECEIVING FACILITIES. MOREOVER, THE EMPLOYEES USE THE SAME ENTRANCE, PUNCH THE SAME TIME CLOCKS AND SHARE THE SAME WASHROOM FACILITIES. ALTHOUGH THE EMPLOYEES ARE LISTED ON SEPARATE PAYROLLS THEY ARE ALL PAID BY CHEQUES IN THE NAME OF GRAPHIC CENTRE. IT IS SIGNIFICANT THAT THE EMPLOYEES WHO GAVE EVIDENCE

ALL TESTIFIED THAT THEY LOOKED UPON THEMSELVES AS EMPLOYEES OF GRAPHIC CENTRE. FROM THE POINT OF VIEW OF THE PUBLIC, ALL OF THE ACTIVITIES AT 31 COMMISSIONER STREET ARE CARRIED ON BY GRAPHIC CENTRE WHICH IS THE NAME THAT APPEARS ABOVE THE ENTRANCE TO THE BUILDING. WE MAKE THIS FINDING NOTWITHSTANDING THAT THERE IS STATIONERY BEARING THE NAMES OF THE INDIVIDUAL COMPANIES AS WELL AS STATIONERY BEARING THE NAME GRAPHIC CENTRE. WE WOULD FURTHER MENTION AGAIN THAT THERE IS ONE TELEPHONE LISTING UNDER THE NAME OF GRAPHIC CENTRE AND A SINGLE RECEPTIONIST FOR ALL SIX COMPANIES.

25. THERE IS A COMMON MANAGEMENT STRUCTURE ENCOMPASSING THE RESPONDENT COMPANIES AND THE LINES OF MANAGERIAL AUTHORITY RELATE TO THE OPERATION OF ALL OF THEM. THERE IS A CONTINUITY IN THE FLOW OF PRODUCTION STARTING WITH THE PREPARATORY WORK DONE BY THE EMPLOYEES OF KENNEDY GRAPHIC AND CONTINUING ON TO THE PRINTING WORK DONE BY THE PRESSES OF THE OTHER FIVE COMPANIES. THE LATTER COMPANIES ARE TOTALLY DEPENDENT UPON THE OFFSET LITHOGRAPHIC PLATES MADE BY KENNEDY GRAPHIC. THERE IS NO INTERCHANGE OF EMPLOYEES BETWEEN KENNEDY GRAPHIC AND THE EMPLOYEES OF THE PRINTING COMPANIES BECAUSE OF THE ENTIRELY DIFFERENT SKILLS NEEDED TO DO THE PREPARATORY AND PRINTING WORK. THERE IS, HOWEVER, A DISTINCT COMMUNITY OF INTEREST AMONG THE EMPLOYEES DOING BOTH THE PREPARATORY AND PRESS WORK AS IT IS ALL PART AND PARCEL OF THE COMPLETE OPERATION INVOLVED IN OFFSET LITHOGRAPHIC PRODUCTION. IT IS THE POLICY OF MANAGEMENT TO UTILIZE BOTH THE EMPLOYEES AND PRESSES OF THE PRINTING COMPANIES TO ACHIEVE MAXIMUM ECONOMY AND EFFICIENCY. ACCORDINGLY, THERE IS A CONSTANT INTERCHANGE OF BOTH MEN AND MACHINES AMONG THE SAID COMPANIES. IN SUMMARY, THE ACTIVITIES OF THE SIX RESPONDENT COMPANIES ARE HIGHLY INTEGRATED AND THERE IS VIRTUALLY A COMPLETE INTERDEPENDENCE OF THE BUSINESSES CARRIED ON BY THEM.

26. THE EMPLOYEES OF THE RESPONDENT COMPANIES ARE PAID UNIFORM WAGE RATES AND THE WORKING CONDITIONS IN THE PLANT ARE THE SAME FOR ALL OF THE EMPLOYEES. THE NON-WORKING FOREMEN AND THE PRODUCTION MANAGER MAKE RECOMMENDATIONS CONCERNING STAFF REQUIREMENTS AND WITH RESPECT TO THE HIRING OF JOB APPLICANTS. IT WOULD APPEAR THAT THEIR RECOMMENDATIONS ARE ACCEPTED BY YASHAR AND WALTERS. THE ULTIMATE RESPONSIBILITY FOR THE HIRING OF EMPLOYEES, HOWEVER, RESTS WITH THEM. ALL OF THE EMPLOYEES WORK UNDER THE DIRECTION OF A COMMON MANAGEMENT. THE MANAGEMENT TAKES THE FORM OF A CENTRALIZED HIERARCHY, WITH WALTERS AT ITS HEAD, WHICH CONTROLS THE OPERATIONS OF THE SIX COMPANIES. THIS BODY CLEARLY HAS THE AUTHORITY TO DEAL WITH ALL LABOUR RELATIONS MATTERS AFFECTING THE EMPLOYEES OF THE RESPONDENTS.

27. HAVING REGARD TO ALL OF THE FOREGOING, THE BOARD FINDS THAT THE ACTIVITIES AND BUSINESSES OF THE RESPONDENT COMPANIES ARE VIRTUALLY COMPLETELY INTEGRATED AND INTERDEPENDENT AND ARE CARRIED ON

UNDER COMMON DIRECTION AND CONTROL. IT ACCORDINGLY IS THE DETERMINATION OF THE BOARD THAT THE SIX RESPONDENT COMPANIES BE TREATED AS ONE EMPLOYER FOR PURPOSES OF THE LABOUR RELATIONS ACT.

28. WE WOULD MENTION AT THIS POINT THAT THE BOARD CERTIFIED THE APPLICANT ON NOVEMBER 1, 1967 FOR A UNIT OF EMPLOYEES OF KENNEDY GRAPHIC COMPOSED OF ALL ARTISTS, STRIPPERS, CAMERAMEN, PLATEMAKERS AND THEIR APPRENTICES. THE BOARD WAS ADVISED AT THE HEARING THAT FROM THE DATE OF THE ISSUANCE OF THE CERTIFICATE TO THE PRESENT TIME NO BARGAINING FOR A COLLECTIVE AGREEMENT HAS TAKEN PLACE BETWEEN THE PARTIES. IN VIEW OF THE THREE AND A HALF YEARS THAT HAVE ELAPSED, THE BOARD FINDS THAT THE APPLICANT HAS ABANDONED THE BARGAINING RIGHTS WHICH IT HAD ACQUIRED BY VIRTUE OF THE BOARD'S CERTIFICATE DATED NOVEMBER 1, 1967.

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31. THE RESPONDENTS FILED A LIST CONTAINING THE NAMES OF 61 PERSONS WHO WERE IN THE EMPLOY OF THE RESPONDENTS AS OF THE DATE OF THE MAKING OF THE APPLICATION. THE APPLICANT HAS FILED EVIDENCE OF MEMBERSHIP FOR 43 PERSONS WHOSE NAMES CORRESPOND TO THOSE APPEARING ON THE RESPONDENTS' LIST.

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33. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

17929-70-R: INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA, LOCAL UNION 1962 (APPLICANT) v. INDUSTRIAL AND DOMESTIC PROTECTION COMPANY LIMITED, AND FAIRVIEW CORPORATION LIMITED (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS P.J. O'KEEFFE AND J.E.C. ROBINSON, Q.C.

DECISION OF O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBER P.J. O'KEEFFE: JULY 9, 1971.

1. IN THIS APPLICATION FOR CERTIFICATION THE TRADE UNION HAS ORGANIZED A GROUP OF EMPLOYEES EMPLOYED BY THE COMPANY AT THE TORONTO-DOMINION CENTRE (HEREINAFTER REFERRED TO AS THE TD CENTRE), AND SEEKS A BARGAINING UNIT OF ALL SECURITY GUARDS EMPLOYED AND WORKING AT THE TD CENTRE WITH CERTAIN EXCEPTIONS THAT ARE NOT HERE MATERIAL. THE COMPANY SUBMITS THAT THE BARGAINING UNIT CLAIMED BY THE TRADE UNION IS INAPPROPRIATE AND SUBMITS THAT THE APPROPRIATE BARGAINING UNIT IS ALL EMPLOYEES OF THE COMPANY EMPLOYED AS SECURITY GUARDS IN THE TORONTO DIVISION OF THE COMPANY WITH CERTAIN EXCEPTIONS THAT ARE NOT HERE MA-

TERIAL. IF THE COMPANY'S POSITION IS ACCEPTED, THEN OF COURSE, THE TRADE UNION WOULD NOT HAVE SUFFICIENT EVIDENCE OF MEMBERSHIP TO OBTAIN EITHER A VOTE OR CERTIFICATION. THAT BEING THE ISSUE IT IS NOW NECESSARY TO EXAMINE THE COMPANY'S OPERATIONS.

2. THE COMPANY, AS IS REFLECTED IN ITS NAME, IS ENGAGED IN THE SUPPLY OF PROTECTION AND SECURITY GUARDS AT VARIOUS LOCATIONS FOR DIFFERENT COMPANIES. IT HAS TWO PRIMARY OPERATIONS - AN ARMoured CAR DIVISION WHICH IS NOT OF CONCERN HERE AND A SECURITY GUARD AND PROTECTION DIVISION WHICH IS THE SUBJECT OF THIS APPLICATION. THE COMPANY OPERATES THROUGHOUT ONTARIO AND IT HAS AN EASTERN ONTARIO DIVISION, A WESTERN DIVISION, AN OTTAWA DIVISION AND A TORONTO DIVISION. WITHIN EACH DIVISION THE COMPANY HAS NUMEROUS CONTRACTS WITH DIFFERENT OFFICES, INDUSTRIES, HOSPITALS AND VARIOUS OTHER EMPLOYERS TO SUPPLY MEN, AND WITHIN THE TORONTO DIVISION THERE ARE APPROXIMATELY 100 SUCH CONTRACTS. THE CONTRACTS THAT WE ARE CONCERNED WITH IN THIS CASE COVER THE TD CENTRE WHICH IS A LARGE OFFICE BUILDING LOCATED IN METROPOLITAN TORONTO. SOME OF THE MEN AT THE TD CENTRE ARE ASSIGNED TO PATROL ANE PREMISES AND OTHERS ARE ASSIGNED TO INDIVIDUAL TENANTS WITHIN THE TD CENTRE.

3. THE TRADE UNION CLAIMS THAT THE MEN ASSIGNED TO THE TD CENTRE ARE SO ASSIGNED ON A PERMANENT BASIS AND ACCORDINGLY THOSE EMPLOYEES FORM A GROUP WHICH IS SEPARATE AND DISTINCT FROM OTHER GUARDS AND FUNCTIONS INDEPENDENTLY. THE COMPANY CLAIMS THAT BECAUSE OF THE NATURE OF ITS BUSINESS THERE IS A HIGH DEGREE OF ROTATION WITH THE GUARDS MOVING FROM CONTRACT TO CONTRACT CREATING A CONSTANT INTERCHANGE.

4. THIS MATTER WAS REFERRED TO AN EXAMINER AND SUBSEQUENTLY A HEARING WAS HELD TO DEAL WITH SUBMISSIONS CONCERNING THE EXAMINER'S REPORT. AT THAT HEARING THE COMPANY WAS PREPARED TO SUBMIT TO THE BOARD, BUT NOT TO THE TRADE UNION, THE NAMES OF ALL ITS EMPLOYEES AND THE VARIOUS CONTRACTS WHICH THE COMPANY SERVICED. SUBSEQUENT TO THE HEARING THE COMPANY FILED WITH THE BOARD IN A SEALED ENVELOPE ALL THAT INFORMATION. THE TRADE UNION TOOK EXCEPTION TO THAT METHOD OF PROCEEDING ON THE BASIS THAT IT WOULD NOT HAVE THE OPPORTUNITY TO INVESTIGATE, ASSESS AND MAKE REPRESENTATIONS WITH RESPECT TO THAT MATERIAL. THE COMPANY WAS PREPARED TO PERMIT COUNSEL FOR THE TRADE UNION TO EXAMINE THE MATERIAL ON THE BASIS THAT HE GAVE CERTAIN UNDERTAKING THAT IT WOULD NOT BE USED FOR ANY OTHER PURPOSE. COUNSEL FOR THE TRADE UNION SUBMITTED THAT ONCE HAVING RECEIVED THE MATERIAL AND INFORMED THE TRADE UNION, THAT THE TRADE UNION COULD NOT DISABUSE ITSELF OF THE INFORMATION OBTAINED AND COUNSEL FOR THE TRADE UNION CANDIDLY SUBMITTED THAT IF THE TRADE UNION SUBSEQUENTLY SOUGHT TO ORGANIZE THE REMAINING EMPLOYEES OF THE RESPONDENT THAT THE POSSIBILITY EXISTED THAT THE TRADE UNION MIGHT BE IN BREACH OF ITS UNDERTAKING WITH THE BOARD. COUNSEL SUBMITTED THAT IT WAS OBVIOUS THAT THE TRADE

UNION COULD NOT DISABUSE ITSELF OF ANY INFORMATION OBTAINED AND ACCORDINGLY REFUSED TO GIVE ANY UNDERTAKING TO THE COMPANY WITH RESPECT TO SUCH INFORMATION.

5. WE ARE OF THE OPINION THAT ALTHOUGH THERE ARE MATTERS AND INFORMATION WHICH A COMPANY MIGHT PREFER NOT TO DISCLOSE, THAT IT IS UNREALISTIC TO PRESERVE A CLOAK OF SECRECY ABOUT INTERNAL COMPANY INFORMATION IN A PROCEEDING SUCH AS THIS ONE. COMPANIES ARE FORCED TO ENCOUNTER GOVERNMENT AGENCIES, COURTS AND ADMINISTRATIVE TRIBUNALS WHERE MATTERS MUST BE REVEALED AND PARTICULARLY SO WHERE THERE ARE CONTESTED ISSUES. WE ARE OF THE OPINION THAT THE SECRECY WHICH THE COMPANY WISHES TO PRESERVE MUST BE WEIGHED AGAINST THE INTERESTS OF THE TRADE UNION HAVING THE OPPORTUNITY TO ASSESS AND COMMENT ON THE COMPANY'S POSITION. FOR THE BOARD TO MAKE A DECISION BASED ON INFORMATION WHICH IS NOT DISCLOSED TO ONE OF THE PARTIES WOULD BE MANIFESTLY UNFAIR TO THE OTHER PARTY AND IN OUR VIEW WOULD BE A DENIAL OF NATURAL JUSTICE AND ACCORDINGLY WE ARE NOT PREPARED TO ACCEPT THOSE SUBMISSIONS ON THAT POINT. WE CONCLUDE THAT ANY BALANCING OF INTEREST MUST WEIGH IN FAVOUR OF DISCLOSING INFORMATION UPON WHICH THE BOARD MIGHT ACT TO THE OPPOSING PARTY FOR ITS INVESTIGATION, ASSESSMENT AND REPRESENTATION AND ACCORDINGLY WE DECLINE TO OPEN THE SEALED ENVELOPE TENDERED TO THIS BOARD FOR ITS OWN USE.

6. ALSO AT THE HEARING THE MATERIAL IN QUESTION WAS SUBMITTED TO THE BOARD IN THE FORM OF A CODE WITH BOTH CONTRACTS AND EMPLOYEES BEING ASSIGNED CODE NUMBERS AND THE BOARD WAS THEN INVITED TO MAKE AN ASSESSMENT OF THAT EVIDENCE. COUNSEL FOR THE TRADE UNION WAS GIVEN THAT INFORMATION AND MADE CERTAIN SUBMISSIONS REGARDING THAT MATERIAL. HAVING REGARD TO THE SUBMISSIONS OF COUNSEL FOR THE TRADE UNION AND CONSIDERING THAT THE TRADE UNION HAS NOT HAD THE OPPORTUNITY TO INVESTIGATE THE MATERIAL SUBMITTED WE ARE OF THE OPINION THAT THE MATERIAL SUBMITTED AND WHICH WAS ACCEPTED BY THE BOARD HAS LITTLE PROBATIVE VALUE. ACCORDINGLY, THE PRIMARY EVIDENCE UPON WHICH WE ARE ACTING IN THIS CASE IS THE EVIDENCE SUBMITTED BY THE PARTIES AND CONTAINED IN THE EXAMINER'S REPORT.

7. AT THE OUTSET COUNSEL FOR THE COMPANY RELIED ON CANADIAN GUARDS ASSOCIATION V. SECURITY INVESTIGATION SERVICES LTD. (BOARD FILE #9111-64-R, DATED SEPTEMBER 1964) INDICATING THAT THE TRADE UNION WAS REQUIRED TO ORGANIZE ALL THE COMPANY'S EMPLOYEES IN METROPOLITAN TORONTO AND COULD NOT ORGANIZE ON A CONTRACT BASIS. WE ARE OF THE OPINION THAT THAT CASE IS BASED ON ITS OWN PARTICULAR FACTS AND THERE IS NOTHING TO PROHIBIT A TRADE UNION ORGANIZING ON A CONTRACT BASIS PROVIDING THAT THE BARGAINING UNIT IS APPROPRIATE. SEE THE CANADIAN UNION OF PUBLIC EMPLOYEES V. THE BOARD OF EDUCATION FOR THE CITY OF TORONTO V. GROUP OF EMPLOYEES, OLRB MTHLY. REP. JULY 1970, 430. FURTHER, THIS BOARD HAS PERMITTED MAINTENANCE CREWS UNDER CON-

TRACT TO A PARTICULAR BUILDING TO BE ORGANIZED ON A CONTRACT BASIS AND WE DO NOT SEE WHY ANY DISTINCTION SHOULD BE MADE BETWEEN A MAINTENANCE CREW WORKING UNDER A SPECIFIC CONTRACT AND A GROUP OF SECURITY GUARDS EMPLOYED IN THE SAME FASHION. HOWEVER, IN THIS CASE THERE IS THE FACTOR OF INTERCHANGE WHICH CANNOT BE OVERLOOKED. WE ARE OF THE OPINION THAT SUFFICIENT OF THE EMPLOYEES AT THE TD CENTRE SHIFT FROM CONTRACT TO CONTRACT OR TO PUT IT IN ANOTHER WAY WHERE THEIR EMPLOYMENT IS OF A NOMADIC NATURE SPRINGING FROM A COMMON LABOUR POOL THAT THE TERMS AND CONDITIONS ARE DETERMINED BY THE COMPANY AND NOT THE PARTICULAR CONTRACT.

8. THE EXAMINER'S REPORT INDICATES THAT BETWEEN DECEMBER 27, 1969 AND JUNE 5, 1970 170 EMPLOYEES WORKED AT THE TD CENTRE. ALSO, THERE WERE 28 FULL-TIME EMPLOYEES AT THE DATE OF THE APPLICATION WHOSE EMPLOYMENT HISTORY FOR A SIX-MONTH PERIOD PRIOR TO THE DATE OF APPLICATION WAS REVIEWED BY THE EXAMINER. OF THOSE EMPLOYEES ONE WORKED ON FOUR CONTRACTS; ONE WORKED ON ANOTHER CONTRACT ON ONE DAY AND SPENT THE REMAINDER OF THE TIME AT THE TD CENTRE; ONE WORKED ON 7 CONTRACTS BETWEEN DECEMBER 27, 1969 AND APRIL 20, 1970 BUT HAS WORKED AT THE TD CENTRE SINCE APRIL 20, 1970; ONE COMMENCED WORK ON A CONTRACT SINCE MARCH 24, AND THEN ON MARCH 25 COMMENCED EMPLOYMENT AT THE TD CENTRE WHERE HE CONTINUED; ONE WORKED ON A NUMBER OF CONTRACTS SINCE HE WAS HIRED INCLUDING THE TD CENTRE; ONE EMPLOYEE ALTERNATES BETWEEN THE TD CENTRE AND ONE OTHER CONTRACT SPENDING FOUR DAYS AT THE TD CENTRE AND TWO DAYS AT THE OTHER CONTRACT; ONE EMPLOYEE HAS WORKED AT THE TD CENTRE A TOTAL OF TEN DAYS SINCE JANUARY 10, 1970 AND THE REMAINING TIME AT VARIOUS OTHER CONTRACTS; AND ONE EMPLOYEE WORKED AT THE TD CENTRE ON THAT DAY ONLY. WITH RESPECT TO THE 28 EMPLOYEES THEREFORE THE EVIDENCE REFLECTS THAT AT LEAST TWENTY-EIGHT PER CENT OF THEM HAVE WORKED AT OTHER CONTRACTS FOR VARYING PERIODS.

9. IN ADDITION, THE EXAMINER'S REPORT INDICATES THAT PERSONS FROM HEADQUARTERS FILL IN FOR EMPLOYEES AT THE TD CENTRE FROM TIME TO TIME AND THAT EMPLOYEES ARE CALLED IN FROM OTHER CONTRACTS TO FILL IN FOR MEN WHO ARE ILL. ONE WITNESS CALLED BY THE TRADE UNION INDICATED THAT HE HAD WORKED AT THE CBC PRIOR TO BEING ASSIGNED TO THE TD CENTRE AND THAT SOME MEN FOUND TO BE UNSUITABLE TO THE TD CENTRE HAD BEEN ASSIGNED TO OTHER CONTRACTS. ANOTHER WITNESS CALLED BY THE TRADE UNION ALSO INDICATED THAT THERE WERE REPLACEMENTS AND THAT CERTAIN MEN HAD LEFT OR WERE TRANSFERRED OUT OF THE TD CENTRE. HE STATED THAT THERE WAS A TURNOVER OF PERSONNEL WHICH SEEMED UNNATURAL AND THAT SINCE THE COMMENCEMENT OF HIS EMPLOYMENT AT THE TD CENTRE ON OCTOBER 14, 1969 THAT ONLY ONE-QUARTER OF THE STAFF WHO WERE AT THE TD CENTRE WHEN HE STARTED WERE STILL THERE. THAT WITNESS ALSO INDICATED THAT VARIOUS EMPLOYEES CAME IN FROM TIME TO TIME FROM OTHER CONTRACTS TO FILL IN AND THEN RETURNED TO THE CONTRACTS WHERE THEY HAD PREVIOUSLY WORKED. EQUALLY, GUARDS AT THE TD CENTRE WERE ASSIGNED TO FILL IN

ON OTHER OUTSIDE CONTRACTS. HE ALSO INDICATED THAT MEN WERE ASSIGNED FROM HEADQUARTERS TO FILL IN AND THAT MEN WHO CAME FROM HEADQUARTERS MIGHT ALSO RETURN TO OTHER CONTRACTS. THE WITNESS STATED THAT A PERSON CAN CONCEIVABLY BE ASSIGNED ON A PARTICULAR CONTRACT ON A REGULAR BASIS OR FOR A COUPLE OF DAYS OR WEEKS DEPENDING ON THE OPENINGS AVAILABLE.

10. IN ASSESSING ALL OF THE EVIDENCE AND WHILE THERE IS SOME INDICATION THAT EMPLOYEES AT THE TD CENTRE WORK ON A PERMANENT BASIS WE ARE SATISFIED THAT THERE IS A SUFFICIENT DEGREE OF INTERCHANGE OF EMPLOYEES AMONG THE VARIOUS CONTRACTS HELD BY THE COMPANY TO ENABLE US TO CONCLUDE THAT THE BARGAINING UNIT APPLIED FOR IS INAPPROPRIATE.

11. ACCORDINGLY THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN ANY BARGAINING UNIT WHICH THE BOARD MIGHT FIND TO BE APPROPRIATE AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 16, 1970 THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

12. THE APPLICATION IS THEREFORE DISMISSED.

DECISION OF J.E.C. ROBINSON, Q.C.: JULY 9, 1971.

1. WHILE I DO NOT NECESSARILY SUBSCRIBE TO OR ENDORSE THE COMMENTS OF THE LEARNED VICE-CHAIRMAN, I AM IN AGREEMENT WITH HIS FINDING THAT BECAUSE OF THE FACTOR OF INTERCHANGE AMONGST THE EMPLOYEES OF THE RESPONDENT BETWEEN THE TORONTO-DOMINION CENTRE CONTRACT AND OTHER CONTRACTS, THAT SUCH APPLICATION SHOULD BE DISMISSED.

338-71-JD: PIGOTT CONSTRUCTION COMPANY LIMITED (COMPLAINANT) v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 597 AND LOCAL UNION 463 OF THE UNITED ASSOCIATION OF JOURNEYMEN OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: A. J. CLARK, Q.C., AND D. H. STEVENS FOR THE COMPLAINANT; R. KOSKIE AND W. FAIRSERVICE FOR LABOURERS' LOCAL 597; L. C. ARNOLD AND G. GALE FOR PLUMBERS' LOCAL 463.

DECISION OF THE BOARD: JULY 30, 1971.

1. THIS IS A COMPLAINT MADE UNDER SECTION 66 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT HAS REQUESTED THAT THE BOARD ISSUE A DIRECTION WITH RESPECT TO A WORK ASSIGNMENT WHICH IT HAS MADE.

2. THE COMPLAINANT (HEREINAFTER REFERRED TO AS PIGOTT) IS THE GENERAL CONTRACTOR ON A CONSTRUCTION PROJECT INVOLVING AN ADDITION AND ALTERATIONS TO THE OSHAWA GENERAL HOSPITAL AT OSHAWA. THE SPECIFICATIONS FORMING PART OF PIGOTT'S CONTRACT WITH THE HOSPITAL PROVIDE THAT PIGOTT IS RESPONSIBLE FOR THE WORK OF UNLOADING, HANDLING AND PLACING INTO POSITION OF CERTAIN EQUIPMENT SUPPLIED BY THE HOSPITAL. THE EQUIPMENT IN QUESTION INCLUDES VARIOUS TYPES OF STERILIZERS AND WASHERS, AND OTHER UNITS USED IN A HOSPITAL. THE INSTALLING AND HOOKING-UP OF THE SAID EQUIPMENT IS THE RESPONSIBILITY OF FISCHBACH & MOORE, THE MECHANICAL CONTRACTOR ON THE PROJECT UNDER THE SPECIFICATIONS FORMING PART OF ITS CONTRACT WITH THE HOSPITAL.

3. THE SAID EQUIPMENT BEGAN TO ARRIVE ON THE CONSTRUCTION PROJECT SITE OF THE HOSPITAL AT THE BEGINNING OF FEBRUARY 1971. GEORGE GALE, THE BUSINESS AGENT FOR THE RESPONDENT PLUMBERS UNION LOCAL 463 CLAIMED THAT THE WORK OF UNLOADING AND PLACING INTO POSITION OF THE EQUIPMENT, WHICH WAS TO BE INSTALLED BY THE WORK FORCE OF THE MECHANICAL CONTRACTOR, FELL WITHIN THE WORK JURISDICTION OF THE PLUMBERS. BY A MEMORANDUM DATED FEBRUARY 5, 1971, THE PROJECT SUPERINTENDENT OF PIGOTT ON THE PROJECT, ONE B. K. McGRATH, ADVISED D. H. STEVENS, THE DIRECTOR OF INDUSTRIAL RELATIONS, OF THE CLAIM MADE BY GALE. IT WOULD APPEAR THAT AS A RESULT OF THE CLAIM MADE BY THE PLUMBERS, McGRATH CONTRACTED OUT TO THE MECHANICAL CONTRACTOR FISCHBACH & MOORE THE WORK IN PIGOTT'S CONTRACT WITH THE HOSPITAL OF UNLOADING AND PLACING INTO POSITION THE EQUIPMENT SUPPLIED BY THE HOSPITAL WHICH ARRIVED ON THE SITE FROM EARLY FEBRUARY TO MID-APRIL. THE MOVING OF THE EQUIPMENT WAS DONE UNDER INDIVIDUAL WORK ORDERS CHARGED BACK TO PIGOTT BY FISCHBACH & MOORE. THE LATTER FIRM USED PLUMBERS TO DO THE WORK. IT WOULD SEEM THAT DURING THIS PERIOD THERE WAS NO OBJECTION MADE BY THE RESPONDENT LABOURERS' UNION TO THIS ARRANGEMENT. WE WOULD MENTION THAT ACCORDING TO THE EVIDENCE OF DONALD STEVENS, IN LATE FEBRUARY OR EARLY MARCH HE DIRECTED McGRATH BY TELEPHONE TO ASSIGN THE WORK OF UNLOADING AND PLACING INTO POSITION OF THE OWNER'S (I.E. HOSPITAL) EQUIPMENT TO LABOURERS IN THE EMPLOY OF PIGOTT, STEVENS FURTHER TESTIFIED THAT HE WAS UNAWARE OF THE FACT THAT McGRATH HAD BEEN ASSIGNING THE WORK TO FISCHBACH & MOORE UNDER WORK ORDERS UNTIL MID-APRIL.

4. IN MID-APRIL RICHARD VOLK REPLACED McGRATH AS PROJECT SUPERINTENDENT FOR PIGOTT ON THE OSHAWA GENERAL HOSPITAL PROJECT. VOLK IMMEDIATELY UPON ASSUMING THE JOB PROCEEDED TO ASSIGN THE WORK OF MOVING THE OWNER'S EQUIPMENT THAT ARRIVED ON THE SITE TO LABOURERS IN THE EMPLOY OF PIGOTT. GALE OBJECTED TO THIS ASSIGNMENT AND TWO DAYS LATER

ON APRIL 22, 1970, THE PLUMBERS ON THE PROJECT PUT UP A PICKET LINE. STEVENS THEREUPON COMMUNICATED WITH THE RESPONSIBLE INTERNATIONAL REPRESENTATIVES OF THE LABOURERS AND PLUMBERS IN THE OSHAWA AREA TO GET THEM TO WORK OUT A MUTUALLY SATISFACTORY SETTLEMENT OF THE DISPUTE. STEVENS' EFFORTS IN THIS RESPECT WERE UNSUCCESSFUL. THE PLUMBERS, HOWEVER, DID AGREE TO REMOVE THE PICKET LINE ON THE UNDERSTANDING THAT PIGOTT WOULD CEASE TO ASSIGN THE MOVING OF THE OWNER'S EQUIPMENT TO LABOURERS PENDING A DETERMINATION BEING MADE BY THIS BOARD. ON APRIL 27, 1971, PIGOTT FILED THE INSTANT COMPLAINT. SUBSEQUENT TO THE BOARD'S CONSULTATION WITH THE PARTIES, THE BOARD ISSUED AN INTERIM ORDER DATED MAY 4, 1971 DIRECTING PIGOTT TO ASSIGN THE WORK INVOLVED IN THE UNLOADING, HANDLING AND PLACING INTO POSITION OF ALL MECHANICAL EQUIPMENT OVER WHICH PIGOTT HAS CONTROL, WHICH WAS TO BE INSTALLED BY THE PLUMBERS ON THE OSHAWA GENERAL HOSPITAL PROJECT, TO PERSONS REPRESENTED BY PLUMBERS LOCAL UNION 463. VOLK TESTIFIED THAT FOLLOWING THE ISSUING OF THE BOARD'S INTERIM ORDER, NONE OF THE OWNER'S EQUIPMENT HAS BEEN MOVED BY EMPLOYEES OF PIGOTT. RATHER, THE OWNER'S EQUIPMENT HAS CONTINUED TO BE MOVED BY FISHBACH & MOORE UNDER WORK ORDERS FROM PIGOTT.

5. HEARINGS ON THE MERITS OF THE WORK ASSIGNMENT DISPUTE WERE HELD BY THE BOARD ON JUNE 22 AND JULY 16, 1971. THE RELEVANT EVIDENCE RELATING TO THE DISPUTE ADDUCED BY THE PARTIES IS OUTLINED BELOW.

6. PAUL PIGOTT, THE ASSISTANT VICE-PRESIDENT OF PIGOTT'S OPERATIONS, TESTIFIED THAT HE WAS PROJECT SUPERINTENDENT ON A LARGE ADDITION TO WOMEN'S COLLEGE HOSPITAL IN TORONTO. THIS CONSTRUCTION PROJECT COMMENCED IN 1967 AND WAS ONLY COMPLETED THIS YEAR. HIS EVIDENCE IS THAT THE UNLOADING AND PLACING INTO POSITION OF THE OWNER'S EQUIPMENT OF THE TYPE WITH WHICH WE ARE HERE CONCERNED WAS INCLUDED IN THE WORK SPECIFICATIONS OF PIGOTT WHO WAS THE GENERAL CONTRACTOR. THE TESTIMONY OF MR. PIGOTT IS THAT THE WORK WAS ASSIGNED TO AND PERFORMED BY LABOURERS IN THE EMPLOY OF PIGOTT. ON AT LEAST ONE OCCASION, HOWEVER, WHEN RIGGING WAS REQUIRED TO MOVE SOME LARGE PIECES OF EQUIPMENT, THE MOVING WAS SUBCONTRACTED TO A FIRM THAT SPECIALIZES IN THIS TYPE OF WORK. ON ANOTHER OCCASION PIGOTT SUBCONTRACTED THE MOVING OF CERTAIN LARGE AND EXPENSIVE PIECES OF EQUIPMENT TO THE MECHANICAL CONTRACTOR ON THE PROJECT. MR. PIGOTT TESTIFIED IN CROSS-EXAMINATION THAT THE SUPPLYING OF A MAJORITY OF THE REQUIRED EQUIPMENT WAS CONTRACTED TO THE MECHANICAL CONTRACTOR BY THE HOSPITAL AND THAT THE UNLOADING AND PLACING INTO POSITION OF THIS EQUIPMENT IS WORK CONTAINED IN THE MECHANICAL CONTRACTOR'S SPECIFICATIONS.

7. VINCENT LYNCH IS THE PROJECT SUPERINTENDENT FOR PIGOTT ON THE ETOBICOKE GENERAL HOSPITAL PROJECT IN TORONTO. THE WORK ON THAT PROJECT COMMENCED IN MAY OF 1969 AND IS STILL UNDER CONSTRUCTION.

PIGOTT IS GENERAL CONTRACTOR AND UNDER ITS SPECIFICATIONS IS RESPONSIBLE FOR THE UNLOADING AND MOVING INTO PLACE OF THE OWNER'S EQUIPMENT SUPPLIED BY THE HOSPITAL. LYNCH TESTIFIED THAT HE REACHED AN AGREEMENT WITH THOMAS WILSON, A BUSINESS AGENT FOR PLUMBERS LOCAL 46, WHEREBY THE LABOURERS IN THE EMPLOY OF PIGOTT OFF-LOADED THE OWNER'S EQUIPMENT AND MOVED IT TO ITS FIRST RESTING PLACE OR TO STORAGE INSIDE THE BUILDING. ACCORDING TO LYNCH, THE PLUMBERS MOVED THE EQUIPMENT FROM THAT POINT TO THE LOCATION WHERE IT WAS TO BE INSTALLED, ALSO BY THE PLUMBERS. LYNCH'S EVIDENCE IS THAT THE WORK HAS BEEN PERFORMED ON THE BASIS OF THE ABOVE AGREEMENT. PIGOTT GAVE WORK ORDERS TO THE MECHANICAL CONTRACTOR ON THE PROJECT TO DO THE SECOND STAGE OF THE MOVING, AND THE CONNECTING-UP OF THE EQUIPMENT WAS DONE BY PLUMBERS EMPLOYED BY THE MECHANICAL CONTRACTOR. WILSON, FOR HIS PART, DENIED BEING A PARTY TO ANY SUCH ARRANGEMENT. HIS EVIDENCE IS THAT LYNCH AGREED THAT THE OFF-LOADING AS WELL AS THE MOVING INTO PLACE OF THE EQUIPMENT WOULD BE PERFORMED BY PLUMBERS SUPPLIED BY THE MECHANICAL CONTRACTOR. LYNCH TESTIFIED THAT WHEN RIGGING WAS REQUIRED TO MOVE THE EQUIPMENT PIGOTT EMPLOYED IRONWORKERS TO DO THE WORK.

8. LYNCH'S FURTHER EVIDENCE IS THAT ON THE CONSTRUCTION OF AN ADDITION TO ST. MICHAEL'S HOSPITAL IN TORONTO IN THE EARLY 1960'S, HE WAS ALSO THE PROJECT SUPERINTENDENT FOR PIGOTT WHICH HAD THE GENERAL CONTRACT. ON THAT PROJECT ALSO, PIGOTT WAS RESPONSIBLE FOR THE MOVING AND PLACING INTO POSITION OF THE OWNER'S EQUIPMENT WHICH WAS TO BE INSTALLED BY THE MECHANICAL CONTRACTOR. LYNCH'S EVIDENCE IS THAT PIGOTT ASSIGNED THE WORK OF OFF-LOADING THE OWNER'S EQUIPMENT AND PLACING IT INTO POSITION TO LABOURERS IN THE EMPLOY OF PIGOTT. LYNCH'S TESTIMONY IS THAT WHEN THE INSTALLATION FACILITIES WERE READY AND THE EQUIPMENT COULD IMMEDIATELY BE CONNECTED-UP, THE LABOURERS MOVED THE EQUIPMENT TO THE ACTUAL PLACE OF INSTALLATION. OFTEN, HOWEVER, ACCORDING TO LYNCH, THE INSTALLATION FACILITIES WERE NOT READY, IN WHICH CASE THE EQUIPMENT WOULD ONLY BE MOVED TO THE AREA OR ROOM WHERE IT WAS TO BE LOCATED. IN THE LATTER CIRCUMSTANCE, THE FINAL MOVING OF THE EQUIPMENT INTO PLACE FOR INSTALLATION WAS DONE BY THE PLUMBERS WHO THEN ALSO DID THE ACTUAL INSTALLATION WORK.

9. BRUCE SNEAD, A BUSINESS AGENT FOR THE PLUMBERS LOCAL 46, TESTIFIED THAT ON CONSTRUCTION PROJECTS ON THE MOUNT SINAI HOSPITAL, SICK CHILDREN'S HOSPITAL AND CENTRAL HOSPITAL, ALL LOCATED IN TORONTO, THERE WAS OWNER'S EQUIPMENT TO BE UNLOADED AND PLACED INTO POSITION. ACCORDING TO SNEAD, THIS WORK WAS DONE BY THE MECHANICAL CONTRACTOR ON THE RESPECTIVE PROJECTS USING PLUMBERS. THERE IS NO EVIDENCE, HOWEVER, AS TO WHETHER THE MOVING OF THE OWNER'S EQUIPMENT WAS INCLUDED IN THE SPECIFICATIONS OF THE GENERAL CONTRACTOR OR MECHANICAL CONTRACTOR ON EACH OF THE PROJECTS. ALVIN MCGORN, A PIPEFITTING SUPERVISOR IN THE EMPLOY OF FISCHBACH & MOORE, ALSO TESTIFIED THAT PLUMBERS DID THE WORK OF UNLOADING AND PLACING INTO POSITION OF OWNER'S EQUIPMENT

ON THE UNIVERSITY OF TORONTO MEDICAL SCIENCE BUILDING. ACCORDING TO MCGORN, FISCHBACH & MOORE WAS THE MECHANICAL CONTRACTOR ON THE PROJECT. IT IS NOT CLEAR FROM MCGORN'S EVIDENCE WHETHER THE WORK WAS INCLUDED IN MECHANICAL CONTRACTOR'S OR GENERAL CONTRACTOR'S SPECIFICATIONS.

10. DAVID MORTON, A JOURNEYMAN PLUMBER, TESTIFIED THAT HE WORKED ON THE UXBRIDGE COTTAGE HOSPITAL IN 1964 OR 1965 AND THAT PLUMBERS UNLOADED AND PUT INTO PLACE ALL THE OWNER'S EQUIPMENT. THE EVIDENCE OF RONALD LOWRY, ANOTHER PLUMBER WHO WORKS IN THE OSHAWA AREA, IS THAT THE MOVING OF OWNER'S EQUIPMENT FORMED PART OF THE GENERAL CONTRACT ON THE PORT PERRY HOSPITAL PROJECT IN 1968 BUT THAT THE GENERAL CONTRACTOR "BORROWED" PLUMBERS FROM THE MECHANICAL CONTRACTOR ON THE PROJECT TO DO THE WORK. LOWRY FURTHER TESTIFIED THAT WHEN THE OSHAWA DENTAL CLINIC WAS CONSTRUCTED IN 1966, THE DENTISTS, WHO WERE THE OWNERS, HAD THEIR EQUIPMENT MOVED BY PLUMBERS FROM THEIR OLD PREMISES TO THE NEW BUILDING. THOMAS WILSON'S EVIDENCE IS THAT THE PLUMBERS HAVE MOVED OWNER SUPPLIED EQUIPMENT FOR SUCH COMPANIES AD DOMINION GLASS, CARLING BREWERIES, AND ST. LAWRENCE CEMENT. ONCE MORE, THERE IS NO EVIDENCE AS TO WHETHER THE MOVING OF THE EQUIPMENT WAS IN THE WORK SPECIFICATIONS OF THE GENERAL CONTRACTOR OR THE MECHANICAL CONTRACTOR.

11. PAUL PIGOTT, LYNCH AND VOLK ALL TESTIFIED THAT PARTICULARLY IN THE CASE OF THE SMALLER PIECES OF OWNER'S EQUIPMENT, THE MANUFACTURERS OF THE EQUIPMENT DELIVERED IT ON SITE WITHOUT ANY PRIOR NOTICE. IN THE CASE OF LARGER PIECES OF EQUIPMENT, AND ESPECIALLY WHEN RIGGING WAS REQUIRED TO REMOVE THE EQUIPMENT, SOME ADVANCE NOTICE WAS GIVEN AS TO THE ARRIVAL OF THE EQUIPMENT ON SITE. THE EVIDENCE OF ALL THREE PROJECT SUPERINTENDENTS, HOWEVER, WAS THAT THE ARRIVAL OF THE EQUIPMENT WAS ON AN INTERMITTENT BASIS AND THAT IT HAD TO BE REMOVED FROM THE VEHICLES BRINGING IT ON SITE IMMEDIATELY. FURTHER, THE NUMBER OF PERSONS REQUIRED TO OFF-LOAD THE EQUIPMENT VARIED ACCORDING TO THE SIZE AND NUMBER OF UNITS DELIVERED. ALSO, THE NUMBER OF MAN HOURS REQUIRED TO DO THE WORK DEPENDED ON THE SIZE AND NUMBER OF UNITS DELIVERED. THE NUMBER OF MAN HOURS DEPENDED AS WELL ON WHETHER THE EQUIPMENT WAS SIMPLY OFF-LOADED AND PUT INTO STORAGE IN THE BUILDING OR WHETHER IT WAS PLACED IN THE LOCATION WHERE IN WAS TO BE INSTALLED.

12. PIGOTT HAS A COLLECTIVE AGREEMENT WITH THE LABOURERS AND HAS ONLY EMPLOYED LABOURERS ON OSHAWA GENERAL HOSPITAL, THE ETOBICOKE GENERAL HOSPITAL AND THE WOMEN'S COLLEGE HOSPITAL PROJECTS. THE EVIDENCE OF PAUL PIGOTT, LYNCH AND VOLK IS THAT THEY ALWAYS HAD A CREW OF LABOURERS WORKING ON THE SITE AND THAT THESE EMPLOYEES WERE USED TO OFF-LOAD THE EQUIPMENT WHEN IT ARRIVED AND MOVE IT INTO THE BUILDING. WHEN THIS WORK WAS COMPLETED, THE LABOURERS WERE EMPLOYED ELSEWHERE ON SITE. IN OTHER WORDS, PIGOTT WAS ALWAYS ABLE TO COMPLETELY UTILIZE THE TIME OF THE LABOURERS IN THE COMPANY'S EMPLOY. THE EVI-

DENCE IS THAT PIGOTT DOES NOT HAVE A COLLECTIVE BARGAINING RELATIONSHIP WITH THE UNITED ASSOCIATION AND HAS NEVER EMPLOYED PLUMBERS. THE THREE PROJECT SUPERINTENDENTS TESTIFIED THAT THERE WAS NO WORK FOR THE PLUMBERS UNDER PIGOTT'S HOSPITAL CONTRACTS OTHER THAN THE MOVING OF THE OWNER'S EQUIPMENT. THE EVIDENCE IS, HOWEVER, THAT AN EMPLOYER WOULD HAVE TO PAY PLUMBERS FOUR HOURS' REPORTING TIME, REGARDLESS OF THE NUMBER OF HOURS THEY WORKED.

13. THE WITNESSES CALLED BY PIGOTT ALL STATED THAT THERE IS NO SKILL REQUIRED IN DOING THE MOVING WORK OTHER THAN THE NEED FOR A "STRONG BACK" AND THE EXERCISE OF REASONABLE CARE. THE ONLY TOOLS USED ARE PRY BARS AND ROLLERS OR DOLLIES. THE EVIDENCE IS THAT LABOURERS ARE PAID A LOWER WAGE RATE THAN PLUMBERS AND THAT WHEN PIGOTT SUBCONTRACTS THE WORK OF MOVING THE OWNER'S EQUIPMENT TO THE MECHANICAL SUBCONTRACTOR ON THE PROJECT IT HAS TO PAY ADDITIONAL ADMINISTRATION COSTS CHARGED BY THE MECHANICAL CONTRACTOR.

14. GEORGE GALE TESTIFIED THAT WHETHER OR NOT THE UNITED ASSOCIATION WOULD PROVIDE PLUMBERS TO PIGOTT FOR PERFORMING THE WORK IN DISPUTE WOULD BE THE DECISION OF THE EXECUTIVE OF THE LOCAL UNION CONCERNED. HIS EVIDENCE IS THAT SUCH A DECISION WOULD DEPEND, IN PART, ON AT LEAST THE AMOUNT OF WORK INVOLVED. IT APPEARED FROM THE EVIDENCE OF THE WITNESSES CALLED BY THE RESPONDENT PLUMBERS THAT THEY WOULD PREFER THAT THE GENERAL CONTRACTOR CONTRACT THE WORK OUT TO THE MECHANICAL CONTRACTOR ON THE PROJECT RATHER THAN HAVE THE GENERAL CONTRACTOR PERFORM THE WORK WITH HIS OWN FORCES.

15. COUNSEL FOR PIGOTT MADE THE FOLLOWING SUBMISSIONS. ALTHOUGH BY THE RECENT AMENDMENTS TO SECTION 66 OF THE ACT THE BOARD NOW HAS THE JURISDICTION TO DEAL WITH WORK ASSIGNMENT DISPUTES WHEN THE EMPLOYER ONLY HAS MEMBERS OF ONE OF THE DISPUTING UNIONS IN ITS EMPLOY, IT IS NOT CONTEMPLATED BY THE PRESENT LEGISLATION THAT THE BOARD USE ITS POWER TO MAKE A WORK ASSIGNMENT TO PERSONS REPRESENTED BY A TRADE UNION WHICH THE EMPLOYER DOES NOT EMPLOY OR A TRADE UNION WITH WHICH THE EMPLOYER HAS NO COLLECTIVE BARGAINING RELATIONSHIP. COUNSEL FOR PIGOTT FURTHER SUBMITS THAT WHERE THE GENERAL CONTRACTOR HAS SUBCONTRACTED THE WORK OF UNLOADING AND PLACING INTO POSITION OF THE OWNER'S EQUIPMENT TO THE MECHANICAL CONTRACTOR ON THE PROJECT, THE WORK ASSIGNMENT MADE BY THE MECHANICAL CONTRACTOR IS NOT A RELEVANT CONSIDERATION IN DETERMINING THE WORK ASSIGNMENT DISPUTE. COUNSEL SUBMITS AS WELL THAT THERE IS NO SKILL REQUIRED TO DO THE WORK IN DISPUTE AND THAT THE EVIDENCE MAKES IT CLEAR THAT IT IS MORE ECONOMICAL AND EFFICIENT TO USE LABOURERS RATHER THAN PLUMBERS. COUNSEL ARGUES THAT IN THIS CIRCUMSTANCE THE CHOICE SHOULD BE LEFT TO THE EMPLOYER AS TO WHICH TRADE HE PREFERENCES TO USE TO PERFORM THE WORK. IN SUPPORT OF THE LATTER SUBMISSION, COUNSEL CITED THE BOARD'S DECISION IN THE FALCONBRIDGENICKEL MINES LIMITED CASE OLRB M.R. JUNE 1968 P.

313. COUNSEL ALSO CONTENDS THAT THE PAST PRACTICE OF PIGOTT IN THE OSHAWA AND TORONTO AREA ALSO SUPPORTS A DETERMINATION BY THE BOARD IN FAVOUR OF THE LABOURERS. COUNSEL QUERIED, ON THE BASIS OF THE EVIDENCE, WHETHER THE UNITED ASSOCIATION WOULD SUPPLY PLUMBERS TO PIGOTT EVEN IF THE BOARD WERE TO ASSIGN THE WORK IN DISPUTE TO PLUMBERS.

16. COUNSEL FOR THE LABOURERS AFTER REVIEWING THE EVIDENCE SUBMITTED THAT IN SO FAR AS SKILL IS CONCERNED, THE LABOURERS POSSESS WHATEVER SKILL, IF ANY, IS REQUIRED. COUNSEL FURTHER SUBMITTED THAT THE MANAGEMENT OF PIGOTT INDICATED ITS SATISFACTION WITH THE PERFORMANCE OF THE WORK IN DISPUTE BY LABOURERS AT THE SUBJECT PROJECT AND OTHER PROJECTS AND THAT PIGOTT HAS A QUALIFIED CREW OF LABOURERS AVAILABLE TO PERFORM THE WORK. COUNSEL SUBMITS AS WELL THAT IT IS MORE ECONOMICAL AND EFFICIENT FOR THE WORK TO BE ASSIGNED TO LABOURERS AND IT IS IN ACCORD WITH PIGOTT'S PAST PRACTICE. COUNSEL CONTENDS THAT AN ASSIGNMENT IN FAVOUR OF THE LABOURERS IS CONSISTENT WITH THE CONTRACTUAL RELATIONSHIP THAT EXISTS BETWEEN PIGOTT AND THE LABOURERS LOCAL UNION 597. COUNSEL DREW ATTENTION TO PREVIOUS DECISIONS OF THE BOARD IN WHICH THE PREFERENCE OF THE EMPLOYER IN MAKING THE WORK ASSIGNMENT WAS A FACTOR UPON WHICH THE BOARD PLACED RELIANCE IN MAKING ITS DETERMINATION IN JURISDICTIONAL DISPUTES, I.E. FALCONBRIDGE NICKEL MINES LIMITED CASE, SUPRA; HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO CASE OLRB M.R. NOVEMBER 1969 P. 1015. COUNSEL ALSO CITED DECISIONS OF THE NATIONAL LABOUR RELATIONS BOARD IN SUPPORT OF HIS SUBMISSIONS.

17. COUNSEL FOR THE RESPONDENT PLUMBERS SUBMITTED THAT THE WORK OF UNLOADING AND PLACING INTO POSITION OF EQUIPMENT WHICH WAS TO BE INSTALLED OR "HOOKED-UP" BY PLUMBERS, WHEN THAT WORK WAS IN THE SPECIFICATIONS OF THE MECHANICAL CONTRACTOR, WAS INVARIABLY DONE BY PLUMBERS. COUNSEL SUBMITS THAT THIS IS THE CASE WHETHER THE EQUIPMENT IS SUPPLIED BY THE OWNER OR BY THE MECHANICAL CONTRACTOR. COUNSEL POINTED OUT, MOREOVER, THAT THE LABOURERS NEVER HAVE AND ARE NOT NOW CLAIMING JURISDICTION OVER THE ABOVE WORK. COUNSEL CONTENDS THAT THE FACT THAT THE MOVING OF THE OWNER'S EQUIPMENT HAPPENS TO BE IN THE WORK SPECIFICATIONS OF THE GENERAL CONTRACTOR AS OPPOSED TO THE MECHANICAL CONTRACTOR IS NOT SUFFICIENT REASON TO UPSET THE ESTABLISHED WORK JURISDICTION OF THE PLUMBERS SINCE THERE IS NO DIFFERENCE WHATSOEVER IN THE NATURE OF WORK TO BE PERFORMED. COUNSEL FURTHER SUBMITS THAT THERE IS A CERTAIN AMOUNT OF SKILL INVOLVED PARTICULARLY IN THE OFF-LOADING AND MOVING INTO PLACE OF LARGE PIECES OF EQUIPMENT. IN SUPPORT OF THIS SUBMISSION COUNSEL CITED THE EVIDENCE OF PAUL PIGOTT. COUNSEL SUGGESTS THAT THE EVIDENCE OF THE PRACTICE OF PIGOTT BOTH ON THE SUBJECT PROJECT AND ON OTHER HOSPITAL PROJECTS IN THE TORONTO AREA IS NOT CONSISTENT. COUNSEL CONTENDS THAT PAST PRACTICE IN THE MOVING OF THE OWNER'S EQUIPMENT ON OTHER PROJECTS IN THE OSHAWA AND TORONTO AREA

FAVOURS THE PLUMBERS. COUNSEL ARGUES THAT WHILE THE COSTS MAY BE SOMEWHAT GREATER USING PLUMBERS RATHER THAN LABOURERS IN RELATION TO THE OVERALL COSTS OF THE PROJECT, AND HAVING REGARD ALSO TO THE SMALL AMOUNT OF EQUIPMENT SUPPLIED BY THE HOSPITAL IN THE GENERAL CONTRACT AS COMPARED TO THE LARGE AMOUNT OF EQUIPMENT SUPPLIED BY THE MECHANICAL CONTRACTOR UNDER CONTRACT, THE COST FACTOR IS OF MINOR SIGNIFICANCE.

18. THE EVIDENCE IS THAT PIGOTT WAS OR STILL IS THE GENERAL CONTRACTOR ON THE CONSTRUCTION PROJECTS FOR THREE OTHER HOSPITALS IN THE TORONTO AREA. IN ALL CASES, THE WORK OF UNLOADING AND PLACING INTO POSITION OF THE OWNER'S EQUIPMENT WAS INCLUDED IN PIGOTT'S SPECIFICATIONS UNDER ITS CONTRACT WITH EACH OF THE HOSPITALS. ON ALL OF THE PROJECTS, WHEN PIGOTT USED ITS OWN EMPLOYEES IT ASSIGNED THE WORK OF MOVING THE EQUIPMENT TO LABOURERS. ON THE ST. MICHAEL'S HOSPITAL PROJECT AND THE WOMEN'S COLLEGE HOSPITAL PROJECT, PIGOTT DID ALL OF THE WORK WITH ITS OWN FORCES, WITH THE EXCEPTION OF THE MOVING OF A NUMBER OF LARGE PIECES OF EQUIPMENT ON THE LATTER PROJECT. WITH RESPECT TO THOSE PARTICULAR PIECES OF EQUIPMENT, PIGOTT EITHER SUBCONTRACTED THEM TO THE MECHANICAL CONTRACTOR ON THE PROJECT OR TO A FIRM THAT SPECIALIZED IN DOING RIGGING WORK. ON THE SUBJECT HOSPITAL PROJECT, FROM THE TIME THE OWNER'S EQUIPMENT WAS AT FIRST DELIVERED ON THE SITE TO THE TIME WHEN THE INSTANT DISPUTE AROSE, PIGOTT HAD CONTRACTED OUT ALL OF THE WORK OF MOVING THE OWNER'S EQUIPMENT TO THE MECHANICAL CONTRACTOR ON THE PROJECT. ON THE ETOBICOKE GENERAL HOSPITAL PROJECT, THE INITIAL UNLOADING OF THE OWNER'S EQUIPMENT INTO THE BUILDING WAS DONE BY LABOURERS IN PIGOTT'S EMPLOY. THE MOVING OF THE EQUIPMENT IN THE BUILDING TO THE PLACE OF INSTALLATION WAS SUBCONTRACTED TO THE MECHANICAL CONTRACTOR ON THE PROJECT. THE EVIDENCE IS THAT THE MOVING WORK WHICH PIGOTT CONTRACTED OUT WAS PERFORMED BY PLUMBERS. HOWEVER, SINCE THE CHOICE OF TRADESMEN TO DO THE WORK WAS MADE BY THE SUBCONTRACTORS, THE FACT THAT THE PLUMBERS ACTUALLY DID THE WORK HAS LESS PERSUASIVE VALUE THAN IF THE ASSIGNMENT HAD BEEN MADE BY PIGOTT.

19. IT IS CLEAR THAT THERE IS NO DISPUTE BETWEEN THE LABOURERS AND PLUMBERS THAT WHEN EQUIPMENT IS TO BE SUPPLIED AND INSTALLED BY A MECHANICAL CONTRACTOR, THE WORK OF UNLOADING THE EQUIPMENT FALLS UNDER THE WORK JURISDICTION OF THE PLUMBERS. WE DO NOT ACCEPT THE SUBMISSION OF COUNSEL FOR THE PLUMBERS, HOWEVER, THAT NO REAL DISTINCTION CAN BE MADE BETWEEN THE ABOVE SITUATION AND THE INSTANT CASE SIMPLY BY REASON OF THE FACT THAT EQUIPMENT IS SUPPLIED BY THE OWNER AND THAT THE MOVING OF THE EQUIPMENT FORMS PART OF THE CONTRACT OF THE GENERAL CONTRACTOR. THE DISTINCTION IS THAT THE WORK HAS BEEN ASSIGNED HERE BY PIGOTT, WHO IS THE GENERAL CONTRACTOR, TO HIS OWN WORK FORCES AS OPPOSED TO THE WORK BEING PERFORMED BY THE EMPLOYEES OF THE MECHANICAL CONTRACTOR. MECHANICAL CONTRACTORS VIRTUALLY

ALWAYS EMPLOY PLUMBERS AND GENERALLY HAVE A COLLECTIVE BARGAINING RELATIONSHIP WITH THAT TRADE. ON THE OTHER HAND, AS A RULE GENERAL CONTRACTORS DO NOT HAVE PLUMBERS IN THEIR EMPLOY OR A COLLECTIVE AGREEMENT WITH THAT TRADE. THIS IS SO IN THE CASE OF PIGOTT.

20. BUSINESS AGENTS OF THE UNITED ASSOCIATION AND JOURNEYMEN PLUMBERS TESTIFIED THAT PLUMBERS HAVE DONE THE WORK OF UNLOADING THE OWNER'S EQUIPMENT AND PLACING IT IN POSITION ON HOSPITAL AND MEDICAL PROJECTS IN THE TORONTO AND OSHAWA AREA. THEIR EVIDENCE, HOWEVER, IS NOT CLEAR AS TO WHETHER THE MOVING OF THE OWNER'S EQUIPMENT WAS INCLUDED IN THE SPECIFICATIONS OF THE CONTRACT OF THE GENERAL CONTRACTOR OR THE MECHANICAL CONTRACTOR. IN CERTAIN INSTANCES THE EVIDENCE SUGGESTS THAT THE MOVING OF THE EQUIPMENT WAS PART OF THE GENERAL CONTRACT. HOWEVER, THERE IS NO EVIDENCE IN THESE SITUATIONS AS TO WHETHER THE GENERAL CONTRACTOR SUBCONTRACTED THE WORK TO THE MECHANICAL CONTRACTOR ON THE PARTICULAR PROJECT. AS WE HAVE ALREADY INDICATED, THE WORK ASSIGNMENT MADE BY THE MECHANICAL CONTRACTOR CAN BE OF LIMITED GUIDANCE TO US IN ARRIVING AT A DETERMINATION ON THE PRESENT JURISDICTIONAL DISPUTE.

21. THE EVIDENCE IS THAT PIGOTT HAS NO PLUMBERS IN ITS EMPLOY BUT ALWAYS HAS A CREW OF LABOURERS AVAILABLE. FURTHER, THE DELIVERY OF THE OWNER'S EQUIPMENT TO THE SITE IS INTERMITTENT, AND GENERALLY WITHOUT PRIOR NOTICE. ALSO, DEPENDING ON THE AMOUNT OF EQUIPMENT DELIVERED AND WHETHER IT IS TO BE UNLOADED AND ONLY MOVED INTO STORAGE OR WHETHER IT IS TO BE MOVED TO THE PLACE OF INSTALLATION, THE TIME REQUIRED TO DO THE WORK CAN VARY FROM VERY SHORT TO LENGTHY PERIODS. REGARDLESS OF THE TIME TAKEN, IF PLUMBERS WERE USED PIGOTT WOULD HAVE TO PAY THEM AT LEAST FOUR HOURS' REPORTING TIME. MOREOVER, PIGOTT HAS NO OTHER WORK WHICH COULD BE PERFORMED BY THE PLUMBERS WHEN THEY WERE NOT MOVING THE OWNER'S EQUIPMENT. HAVING REGARD TO THE ABOVE CONSIDERATIONS AND ALSO THE WAGE DIFFERENTIAL AS BETWEEN PLUMBERS AND LABOURERS, WE ARE SATISFIED THAT IT WOULD BE BOTH MORE EFFICIENT AND ECONOMICAL FOR PIGOTT TO USE LABOURERS TO DO THE WORK IN DISPUTE.

22. PIGOTT'S OWN PAST AND CURRENT PRACTICE IN THE UNLOADING OF OWNER'S EQUIPMENT FAVOURS THE LABOURERS. ITS PRACTICE, HOWEVER, WITH RESPECT TO THE HANDLING AND MOVING INTO PLACE OF THE EQUIPMENT IS LESS CONSISTENT. THAT IS TO SAY ON OCCASION PIGOTT HAS ELECTED TO CONTRACT OUT SOME OF THE MOVING WORK IN THE KNOWLEDGE THAT IT WOULD BE PERFORMED BY PLUMBERS. THERE ARE NO CRAFT SKILLS INVOLVED IN DOING THE WORK. THE EVIDENCE DOES INDICATE HOWEVER, THAT CONSIDERABLE CARE MUST BE EXERCISED IN MOVING THE EQUIPMENT, PARTICULARLY IN THE CASE OF LARGE AND EXPENSIVE PIECES.

23. HAVING REGARD TO ALL OF THE EVIDENCE AND THE SUBMISSION OF THE PARTIES THE BOARD DIRECTS THAT PIGOTT CONSTRUCTION COMPANY LIMITED

MAKE THE FOLLOWING WORK ASSIGNMENTS WITH RESPECT TO THE MOVING OF MECHANICAL EQUIPMENT OVER WHICH IT HAS CONTROL ON THE OSHAWA GENERAL HOSPITAL PROJECT AT OSHAWA:

- (1) THE UNLOADING OF THE EQUIPMENT, EXCEPT WHEN RIGGING IS USED, SHALL BE ASSIGNED TO MEMBERS OF THE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 597.
- (2) WHERE THE EQUIPMENT IMMEDIATELY CAN BE PLACED IN ITS APPROXIMATE POSITION FOR INSTALLATION UPON BEING UNLOADED, THE WORK OF HANDLING AND PLACING THE EQUIPMENT IN ITS APPROXIMATE POSITION FOR INSTALLATION SHALL BE ASSIGNED TO MEMBERS OF THE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 597.
- (3) WHERE THE EQUIPMENT CANNOT IMMEDIATELY BE PLACED IN ITS APPROXIMATE POSITION FOR INSTALLATION, THE WORK OF HANDLING AND MOVING THE EQUIPMENT INTO STORAGE OR TO ITS FIRST TEMPORARY LOCATION UPON BEING UNLOADED, SHALL BE ASSIGNED TO MEMBERS OF THE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 597.
- (4) THE HANDLING AND MOVING OF EQUIPMENT FROM STORAGE OR ITS FIRST TEMPORARY LOCATION UPON BEING UNLOADED, TO ITS FINAL POSITION FOR INSTALLATION, SHALL BE ASSIGNED TO MEMBERS OF THE UNITED ASSOCIATION OF JOURNEYMEN OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 463.

668-71-M: FRED KUEHNER (EMPLOYER) v. LOCAL UNION 1824, OF THE INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES (TRADE UNION).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: NO ONE FOR THE EMPLOYER; M. J. SOMERVILLE AND E. SIRKEL FOR THE TRADE UNION.

DECISION OF THE BOARD: JULY 19, 1971.

1. THE MINISTER HAS REFERRED TO THE BOARD, PURSUANT TO SECTION 79A OF THE ACT, THE QUESTION AS TO WHETHER THE MINISTER HAS THE AUTHORITY UNDER THE ACT TO APPOINT A CONCILIATION OFFICER.

2. THE RELEVANT UNDISPUTED ASSERTIONS OF FACT MADE BY THE REPRESENTATIVE OF THE TRADE UNION (HEREINAFTER REFERRED TO AS LOCAL UNION 1824) ARE OUTLINED BELOW. IN JULY OF 1968 FRED KUEHNER ACCORDED LOCAL UNION 1824 VOLUNTARY RECOGNITION AND ENTERED INTO A COLLECTIVE AGREEMENT DATED APRIL 26, 1965 WHICH REMAINED IN EFFECT UNTIL AUGUST 31, 1969. A COPY OF THE SAID AGREEMENT SIGNED BY KUEHNER WAS FILED WITH THE BOARD AT THE HEARING. AT THE TIME KUEHNER VOLUNTARILY RECOGNIZED LOCAL UNION 1824 AND ENTERED INTO THE COLLECTIVE AGREEMENT, THE UNION REPRESENTED EMPLOYEES OF KUEHNER. IN THE SUBSEQUENT NEGOTIATIONS, CONCILIATION SERVICES WERE MADE AVAILABLE TO THE PARTIES. A SECOND COLLECTIVE AGREEMENT WAS ENTERED INTO BY KUEHNER AND LOCAL UNION 1824 DATED SEPTEMBER 17, 1969 WHICH REMAINED IN EFFECT APRIL 30, 1971. A COPY OF THIS AGREEMENT BEARING KUEHNER'S SIGNATURE WAS ALSO FILED WITH THE BOARD AT THE HEARING. ON MARCH 1, 1971, LOCAL UNION 1824 GAVE NOTICE TO KUEHNER OF ITS DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT AND ON MAY 19, 1971, THE UNION REQUESTED THAT THE MINISTER APPOINT A CONCILIATION OFFICER TO CONFER WITH THE PARTIES IN AN ENDEAVOUR TO EFFECT A COLLECTIVE AGREEMENT.

3. BY LETTER DATED MAY 25, 1971 ADDRESSED TO THE OFFICE OF THE DEPUTY MINISTER OF LABOUR, THE SOLICITORS FOR FRED KUEHNER CHALLENGED THE APPOINTMENT OF A CONCILIATION OFFICER ON THE GROUNDS THAT AT THE TIME KUEHNER ENTERED INTO THE SECOND AGREEMENT DATED SEPTEMBER 17, 1969, HE HAD NO MEMBERS OF LOCAL UNION 1824 IN HIS EMPLOY. THE SOLICITORS FOR KUEHNER IN THEIR LETTER SUBMIT THAT IN ORDER TO COME WITHIN THE DEFINITION OF "COLLECTIVE AGREEMENT" CONTAINED IN SECTION 1(1)(c) OF THE ACT, A TRADE UNION MUST REPRESENT EMPLOYEES OF THE EMPLOYER WHEN THE PARTIES ENTERED INTO THE AGREEMENT. THE SOLICITORS FOR KUEHNER IN THEIR LETTER ARGUE THAT SINCE KUEHNER HAD NO PERSONS IN HIS EMPLOY WHO WERE MEMBERS OF LOCAL UNION 1824 AT THE TIME HE SIGNED THE SEPTEMBER 17, 1969 AGREEMENT, THE SAID AGREEMENT WAS NOT A "COLLECTIVE AGREEMENT" FOR THE PURPOSES OF THE ACT AND THEREFORE THE UNION HAS NO ENTITLEMENT TO CONCILIATION SERVICES WITH RESPECT TO THE EMPLOYEES OF FRED KUEHNER.

4. IT WAS ON THE BASIS OF THE ABOVE WRITTEN SUBMISSIONS OF THE SOLICITORS FOR FRED KUEHNER THAT THE QUESTION AS TO WHETHER THE MINISTER HAD AUTHORITY UNDER THE ACT TO APPOINT A CONCILIATION OFFICER WAS REFERRED TO THE BOARD. YET AT THE BOARD HEARING HELD FOR THE SOLE PURPOSE OF ALLOWING THE PARTIES TO MAKE REPRESENTATIONS ON THIS ISSUE, NO ONE APPEARED ON BEHALF OF FRED KUEHNER.

5. AS HAS ALREADY BEEN STATED, THERE IS NO DISPUTE THAT WHEN KUEHNER ENTERED INTO THE FIRST COLLECTIVE AGREEMENT WITH LOCAL UNION

1824 IN JULY OF 1968 THE UNION REPRESENTED EMPLOYEES OF KUEHNER. THE REQUIREMENTS OF A "COLLECTIVE AGREEMENT" AS DEFINED IN SECTION 1(1) (c) OF THE ACT WERE THEREFORE MET AT THE TIME THE UNION REQUIRED BARGAINING RIGHTS FOR THE EMPLOYEES OF KUEHNER. THERE IS NO SUGGESTION THAT THESE BARGAINING RIGHTS HAVE BEEN TERMINATED OR THAT LOCAL UNION 1824 HAS ABANDONED THEM IN THE INTERVENING PERIOD. INDEED, CONCILIATION SERVICES WERE GRANTED TO THE PARTIES UPON THE EXPIRY OF THE FIRST AGREEMENT AND LOCAL UNION 1824 AND KUEHNER ENTERED INTO A SECOND COLLECTIVE AGREEMENT WHICH JUST EXPIRED ON APRIL 30, 1971. THE FACT THAT AT THE TIME THE SECOND AGREEMENT WAS SIGNED BY KUEHNER HE HAD NO MEMBERS OF LOCAL UNION 1824 IN HIS EMPLOY IS IN NO WAY RELEVANT. LOCAL UNION 1824 STILL HELD AND CONTINUES TO HOLD THE BARGAINING RIGHTS FOR THE EMPLOYEES OF KUEHNER.

6. OUR ANSWER TO THE QUESTION POSED TO THE BOARD IN HIS REFERENCE IS THAT THE MINISTER HAS THE AUTHORITY UNDER THE LABOUR RELATIONS ACT TO APPOINT A CONCILIATION OFFICER.

741-71-U: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. S. McNALLY & SONS, LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS A. MAIN AND W. H. WIGHTMAN.

APPEARANCES AT THE HEARING: H. A. HERRON AND R. MCKINNON FOR THE APPLICANT; BRUCE W. BINNING AND P. J. McNALLY FOR THE RESPONDENT.

DECISION OF THE BOARD: JULY 20, 1971.

1. THE NAME "McNALLY & SONS LIMITED" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "S. McNALLY & SONS, LIMITED".

2. THIS IS AN APPLICATION FOR A DECLARATION THAT A LOCKOUT CALLED OR AUTHORIZED BY THE RESPONDENT IS UNLAWFUL.

3. THE MATERIAL FACTS RELIED UPON BY THE APPLICANT WERE SET OUT IN THE FOLLOWING TERMS:

"AS A RESULT OF A DISPUTE BETWEEN THE RESPONDENT AND LABOURERS INTERNATIONAL UNION, LOCAL 183 ON SECTION Y 6 OF TORONTO TRANSPORTATION COMMISSION SUBWAY CONTRACT, MEMBERS OF THE OPERATING ENGINEERS UNION, LOCAL 793, EMPLOYED BY THE COMPANY ON THE PROJECT HAVE BEEN REFUSED WORK SINCE TUESDAY, JULY 6TH, 1971."

4. AT THE COMMENCEMENT OF THE HEARING INTO THIS APPLICATION THE RESPONDENT MOVED THAT THE APPLICATION BE DISMISSED. IT WAS THE CONTENTION OF THE RESPONDENT THAT EVEN IF THE APPLICANT PROVED THE MATERIAL FACTS UPON WHICH IT RELIED, THEY WOULD NOT CONSTITUTE AN UNLAWFUL LOCKOUT UNDER THE PROVISIONS OF THE ACT. THE BOARD RESERVED ITS DECISION ON THE MOTION AND PROCEEDED TO HEAR THE EVIDENCE.

5. EVIDENCE ON BEHALF OF THE APPLICANT WAS GIVEN BY AL GOWERS, AN EMPLOYEE OF THE RESPONDENT AND A MEMBER OF THE APPLICANT UNION. HE REPORTED FOR WORK AT THE SITE IN QUESTION ON JULY 4, 1971. WHEN HE ARRIVED, HE STATED, A DISPUTE WAS GOING ON IN A CHANGE HUT USED BY "THE MINERS". HE WAITED OUTSIDE UNTIL THE MINERS DECIDED TO GO HOME. EVERY BODY ELSE, THE WITNESS SAID, THEN LEFT AND WENT HOME.

6. GOWERS SAID THAT THE FOLLOWING MORNING, MONDAY, JULY 5, 1971, HE RECEIVED A CALL FROM THE RESPONDENT ADVISING HIM THAT THERE WOULD BE NO WORK UNTIL FURTHER NOTICE. THE RESPONDENT WAS TO LET HIM KNOW WHEN WORK RESUMED. AT THE DATE OF THE HEARING, NO WORD HAD BEEN RECEIVED BY HIM CONCERNING RESUMPTION OF WORK. HE TESTIFIED THAT FOUR MEMBERS OF HIS UNION HAVE BEEN RETAINED ON THE JOB. THESE WERE APPROXIMATELY TEN ENGINEERS NORMALLY ON THE SITE PRIOR TO JULY 4, 1971.

7. R. MCKINNON TESTIFIED THAT HE WAS BUSINESS AGENT FOR THE APPLICANT. HE HAD VISITED THE JOB SITE AND WAS AWARE THAT ONLY THOSE ENGINEERS WHO WERE WHAT HE TERMED "COMPRESSION" MEN WERE ON THE JOB.

8. THERE WAS NO CHALLENGE TO THE APPLICANT'S EVIDENCE BY THE RESPONDENT AND THE LATTER CALLED NO EVIDENCE OF ITS OWN.

9. A LOCKOUT IS DEFINED IN SECTION 1(1)(G) OF THE LABOUR RELATIONS ACT AS FOLLOWS:

"LOCK-OUT" INCLUDES THE CLOSING OF A PLACE OF EMPLOYMENT, A SUSPENSION OF WORK OR A REFUSAL BY AN EMPLOYER TO CONTINUE TO EMPLOY A NUMBER OF HIS EMPLOYEES, WITH A VIEW TO COMPEL OR INDUCE HIS EMPLOYEES, OR TO AID ANOTHER EMPLOYER TO COMPEL OR INDUCE HIS EMPLOYEES, TO REFRAIN FROM EXERCISING ANY RIGHTS OR PRIVILEGES UNDER THIS ACT OR TO AGREE TO PROVISIONS OR CHANGES IN PROVISIONS RESPECTING TERMS OR CONDITIONS OF EMPLOYMENT OR THE RIGHTS, PRIVILEGES OR DUTIES OF THE EMPLOYER, AN EMPLOYERS' ORGANIZATION, THE TRADE UNION, OR THE EMPLOYEES.

10. AS WAS SUBMITTED BY COUNSEL FOR THE RESPONDENT, A LOCKOUT, ACCORDING TO THE DEFINITION, COMPRISES TWO ELEMENTS. THE FIRST OF THESE IS A CLOSING OF THE PLACE OF EMPLOYMENT OR A SUSPENSION OF WORK OR A REFUSAL TO CONTINUE TO EMPLOY A NUMBER OF EMPLOYEES. THE SECOND ELEMENT QUALIFIES THE FIRST, BUT IS NEVERTHELESS AN ESSENTIAL INGREDIENT OF THE DEFINITION. IT STATES THAT, IN A LOCKOUT, THE FOREGOING ACTIONS OF AN EMPLOYER ARE DONE "WITH A VIEW TO COMPEL OR INDUCE HIS EMPLOYEES, TO REFRAIN FROM EXERCISING ANY RIGHTS OR PRIVILEGES UNDER THIS ACT OR TO DEGREE TO PROVISIONS OR CHANGES IN PROVISIONS ETC." BOTH ELEMENTS MUST BE PRESENT BEFORE A LOCKOUT CAN BE SAID TO HAVE TAKEN PLACE.

11. IN THE PRESENT INSTANCE, EVEN IF WE WERE TO ASSUME THAT THE STATEMENT OF MATERIAL FACTS RELIED UPON BY THE APPLICANT CONTAINS BOTH ELEMENTS OF A LOCKOUT AS DEFINED, WE FIND THAT THE EVIDENCE ADDUCED IN SUPPORT OF THE APPLICATION DOES NOT ESTABLISH THE SECOND ELEMENT OF THE DEFINITION. THE APPLICATION IS ACCORDINGLY DISMISSED.

321-71-JD: ABE DICK MASONRY LIMITED (COMPLAINANT) v. LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 493 AND UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 2486 (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: R. D. PERKINS AND ABE DICK FOR THE COMPLAINANT; RAYMOND KOSKIE AND M. ROSS FOR LABOURERS LOCAL 493; NO ONE FOR CARPENTERS LOCAL 2486.

DECISION OF THE BOARD: MAY 21, 1971.

1. THIS IS A COMPLAINT MADE UNDER SECTION 66 OF THE LABOUR RELATIONS ACT.

2. THE WORK IN DISPUTE BETWEEN THE RESPONDENT TRADE UNIONS IS THE ERECTION OF TUBULAR METAL SCAFFOLDING EXTENDING TO A HEIGHT IN EXCESS OF 14 FEET, WHICH SCAFFOLDING IS BEING USED ON THE CANADIAN COLLEGE EDUCATION CENTRE CONSTRUCTION PROJECT AT NORTH BAY.

3. THE PRESIDENT OF THE COMPLAINANT AND THE COMPLAINANT'S SUPERINTENDENT ON THE PROJECT TESTIFIED THAT IT HAD BEEN THE INVARIABLE PRACTICE OF THE COMPLAINANT FOR MORE THAN TWENTY YEARS TO ASSIGN THE WORK IN DISPUTE TO LABOURERS. MOREOVER, ACCORDING TO THEIR TESTIMONY, THIS ASSIGNMENT WAS MADE OUT ONLY ON PROJECTS IN THE NORTH BAY AREA, BUT ALSO THROUGHOUT ALL OF ONTARIO. REPRESENTATIVES OF THREE MASONRY

CONTRACTORS OPERATING OUT OF SUDBURY TESTIFIED AS WELL THAT IT WAS THEIR CONSISTENT PRACTICE TO ASSIGN THE WORK IN DISPUTE TO LABOURERS. THE REPRESENTATIVES OF TWO OF THE COMPANIES STATED THAT ON A COUPLE OF ISOLATED OCCASIONS AN ASSIGNMENT OF THE WORK IN DISPUTE HAD BEEN MADE TO CARPENTERS BUT ONLY ON THE INSISTENCE OF THE GENERAL CONTRACTOR ON THE PROJECT.

4. THE ABOVE WITNESSES FURTHER TESTIFIED THAT IT WAS MORE ECONOMICAL TO USE LABOURERS, NOT ONLY BECAUSE THE WAGE RATE FOR LABOURERS WAS LOWER THAN FOR CARPENTERS, BUT ALSO BECAUSE THEY WERE ABLE TO FULLY UTILIZE LABOURERS IN SCHEDULING WORK. MORE SPECIFICALLY, WHEN A BRICK WALL IS BEING BUILT, IT IS THE FUNCTION OF LABOURERS TO TEND THE BRICKLAYERS. THIS MEANS, ACCORDING TO THE WITNESSES, THAT WHEN THE LABOURERS ARE NOT ERECTING TUBULAR SCAFFOLDING THEY HAVE SUCH DUTIES TO PERFORM AS PREPARING MORTAR AND LIFTING BRICKS UP TO THE TOP OF THE SCAFFOLD FOR USE BY THE BRICKLAYERS. IN OTHER WORDS, THE WORK CAN ALWAYS BE SCHEDULED SO AS TO COMPLETELY UTILIZE THE TIME OF THE LABOURERS. ACCORDING TO THE CONTRACTORS, THE WORK OF ERECTING SCAFFOLDING, ON AVERAGE, MIGHT OCCUPY TWO HOURS A DAY. THE EVIDENCE IS THAT IF CARPENTERS WERE ASSIGNED TO THE WORK, MOST OFTEN THERE WOULD BE NO OTHER WORK FOR THEM TO DO WHEN THEY WERE NOT ERECTING SCAFFOLDING. NOTWITHSTANDING THIS FACT, THE TESTIMONY IS THAT THE MASONRY CONTRACTORS WOULD BE REQUIRED TO PAY THE CARPENTERS FOR ADDITIONAL TIME DURING WHICH THEY HAD NO WORK TO DO.

5. THE FURTHER EVIDENCE OF THE CONTRACTORS WHO TESTIFIED IS THAT NO SKILLS ARE REQUIRED TO ERECT TUBULAR METAL SCAFFOLDING AND CERTAINLY NO SKILLS ASSOCIATED WITH CARPENTERS. ACCORDING TO THE EVIDENCE OF THE CONTRACTORS, THE ERECTION IS DONE MANUALLY AND NO TOOLS ARE NEEDED. NONE OF THE WITNESSES COULD RECALL A SINGLE INSTANCE WHEN THE SCAFFOLDING WAS NOT ERECTED BY THE LABOURERS IN A SAFE MANNER OR WHEN THE ERECTED SCAFFOLDING WAS NOT SAFE FOR USE BY THE BRICKLAYERS. THE CONTRACTORS' TESTIMONY IS THAT THEY WERE COMPLETELY SATISFIED WITH THE ERECTION OF THE SCAFFOLDING AS DONE BY THE LABOURERS AND ALSO THEY EXPRESSED A PREFERENCE TO USE LABOURERS OVER CARPENTERS TO DO THE DISPUTED WORK.

6. WE WOULD MENTION HERE THAT ALTHOUGH THE RESPONDENT CARPENTERS UNION WAS REPRESENTED AT THE HEARING WITH RESPECT TO THE INTERIM ORDER, NO ONE APPEARED ON BEHALF OF THE CARPENTERS AT THE HEARING ON THE MERITS OF THE DISPUTE. THEREFORE, NO EVIDENCE WAS CALLED IN SUPPORT OF THE CLAIM MADE BY THE CARPENTERS TO THE WORK IN DISPUTE.

7. COUNSEL FOR THE COMPLAINANT AND COUNSEL FOR THE LABOURERS CITED THE BOARD'S DECISION IN THE ABE DICK MASONRY LIMITED CASE DATED MAY 1, 1970 (BOARD FILE NO. 17161(A)-69-JD). THE WORK IN DISPUTE IN THAT COMPLAINT WAS IDENTICAL TO THE WORK IN DISPUTE IN THE INSTANT

COMPLAINT AND THE LABOURERS AND CARPENTERS (ALTHOUGH DIFFERENT LOCALS) WERE THE DISPUTING TRADE UNIONS. THE COMPLAINANT, AS THE NAME OF THE CASE INDICATES, WAS THE SAME COMPANY. THE ONLY DIFFERENCE BETWEEN THE TWO CASES IS THAT THE CONSTRUCTION PROJECT IN THE EARLIER CASE WAS IN THE HAMILTON AREA RATHER THAN NORTH BAY. AS IN THE COMPLAINT BEFORE US, IN THE EARLIER ONE THE CARPENTERS APPEARED AT THE HEARING WITH RESPECT TO THE INTERIM ORDER BUT NOT AT THE HEARING RELATING TO THE FINAL DIRECTION. THE BOARD IN THE EARLIER CASE ASSIGNED THE WORK INVOLVED IN THE ERECTION OF TUBULAR METAL SCAFFOLDING THEN BEING USED BY BRICKLAYERS IN BUILDING A THREE STOREY SCHOOL IN THE HAMILTON AREA TO LABOURERS.

8. COUNSEL ALSO CITED SEVEN DECISIONS OF THE NATIONAL LABOUR RELATIONS BOARD INVOLVING DISPUTES BETWEEN THE LABOURERS AND CARPENTERS OVER THE ERECTION OF TUBULAR METAL SCAFFOLDING GREATER THAN 14 FEET IN HEIGHT. IN ALL CASES, THE WORK WAS ASSIGNED BY THE BOARD TO THE LABOURERS.

9. WE HAVE TAKEN INTO ACCOUNT THE UNDISPUTED EVIDENCE RELATING TO PAST PRACTICE AND ALSO THE TESTIMONY WITH RESPECT TO THE FACTORS OF SKILL, ECONOMY, EFFICIENCY AND SAFETY. AS WELL, WE HAVE CONSIDERED THE BOARD'S EARLIER DIRECTION ON THE SAME ISSUE AND THE ABOVE REFERRED TO DECISIONS OF THE NATIONAL LABOUR RELATIONS BOARD. HAVING REGARD TO THE FOREGOING, THE BOARD FINDS THAT THE WORK IN DISPUTE WHICH IS THE SUBJECT MATTER OF THE INSTANT COMPLAINT FALLS WITHIN THE JURISDICTION OF THE LABOURERS.

10. THE BOARD ACCORDINGLY DIRECTS THAT THE COMPLAINANT ABE DICK MASONRY LIMITED ASSIGN THE WORK INVOLVED IN THE ERECTION OF TUBULAR METAL SCAFFOLDING EXTENDING IN HEIGHT IN EXCESS OF 14 FEET, WHICH SCAFFOLDING IS BEING USED ON THE CANADIAN COLLEGE EDUCATION CENTRE CONSTRUCTION PROJECT AT NORTH BAY, TO EMPLOYEES WHO ARE REPRESENTED BY THE LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 493.

17763-70-R: CANADIAN UNION OF CONSTRUCTION WORKERS (APPLICANT) V. RELLIFORMS LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER #1) V. COUNCIL OF CONCRETE-FORMING TRADE UNIONS (INTERVENER #2).

BEFORE: R.A. FURNESS, VICE-CHAIRMAN AND BOARD E. BOYER AND H. F. IRWIN.

DECISION OF VICE-CHAIRMAN R. A. FURNESS AND BOARD MEMBER E. BOYER: JULY 13, 1971.

1. THE BOARD NOTES THE AGREEMENT OF THE PARTIES TO THE SUBSTITUTION OF AN EMPLOYER REPRESENTATIVE IN THE PLACE AND STEAD OF THE LATE MR. R. W. TEAGLE AND THE APPOINTMENT BY THE CHAIRMAN G. W. REED, OF BOARD MEMBER H. F. IRWIN IN THE PLACE AND STEAD OF R. W. TEAGLE.

2. THE BOARD ALSO NOTES THE AGREEMENT OF THE PARTIES TO THE USE BY BOARD MEMBER H. F. IRWIN OF THE NOTES OF THE LATE MR. R. W. TEAGLE IN CONNECTION WITH THE EVIDENCE AND ARGUMENT OF THE PARTIES CONCERNING THE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT FILED BY THE COUNCIL OF CONCRETE-FORMING TRADE UNIONS IN ITS INTERVENTION DATED MAY 13, 1970 AND ITS LETTER DATED AUGUST 19, 1970.

3. WE FIND THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

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7. AS WAS NOTED ABOVE, THE COUNCIL OF CONCRETE-FORMING TRADE UNIONS (HEREINAFTER REFERRED TO AS THE "COUNCIL") FILED ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT INVOLVING THE APPLICANT AND THE RESPONDENT. THE COUNCIL ALLEGED THAT THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT DID NOT REFLECT THE TRUE AND VOLUNTARY WISHES OF THE EMPLOYEES SINCE PERSONS EMPLOYED BY THE RESPONDENT IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS OR IN A SUPERVISORY CAPACITY OR WHO WERE REGARDED BY THE EMPLOYEES AFFECTED BY THIS APPLICATION AS BEING LIKELY TO AFFECT THEIR EMPLOYMENT STATUS INFLUENCED THESE EMPLOYEES TO EXECUTE APPLICATIONS FOR MEMBERSHIP IN THE APPLICANT.

8. GUISEPPE VIDONE WAS CALLED AS A WITNESS BY THE COUNCIL AND THE APPLICANT CALLED MAX CHIKOFSKY, ANTONINO FIGLIANO AND VITTORIO D'ALESSANDRO AS WITNESSES. THE RESPONDENT DID NOT CALL ANY EVIDENCE IN CONNECTION WITH THE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT.

9. VIDONE TESTIFIED THAT DURING THE MONTH OF MAY 1970, HE WAS A STEELMAN IN THE EMPLOY OF THE RESPONDENT AND THAT HIS BOSS AT THAT TIME WAS A MAN CALLED VITTORIO. IT IS CLEAR FROM THE EVIDENCE THAT VITTORIO WAS, DURING THE MONTH OF MAY 1970, A NON-WORKING FOREMAN WHO EXERCISED MANAGERIAL FUNCTIONS ON BEHALF OF THE RESPONDENT AND THAT HE WAS SO REGARDED BY THE STEELMAN IN THE EMPLOY OF THE RESPONDENT. VIDONE GAVE EVIDENCE THAT ON MAY 4, 1970, BEFORE THE COMMENCEMENT OF WORK AT 7:30 A.M. ON THE RESPONDENT'S JOB-SITE AT VICTORIA PARK ROAD AND DANFORTH AVENUE, THE APPLICANT'S ORGANIZERS APPROACHED THE RESPONDENT'S EMPLOYEES AND ENDEAVOURED TO PERSUADE THEM TO SIGN APPLICATIONS FOR MEMBERSHIP IN THE APPLICANT. HE INFORMED THE BOARD THAT HE DID NOT WANT TO SIGN THE MEMBERSHIP CARDS OFFERED BY THE APPLICANT'S ORGANIZERS AND THAT NONE OF THE EMPLOYEES SIGNED MEMBERSHIP CARDS UNTIL

THE INTERCESSION OF VITTORIO AND RALPH (RAFAELE) WHO WAS THE BOSS OF THE CARPENTERS AND LABOURERS IN THE EMPLOY OF THE RESPONDENT AND WHO HELD A SIMILAR POSITION TO VITTORIO IN THE EMPLOY OF THE RESPONDENT.

10. VIDONE GAVE EVIDENCE THAT NONE OF THE 60 TO 65 EMPLOYEES PRESENT SIGNED CARDS UNTIL VITTORIO AND RALPH FORCED THE MEN TO SIGN APPLICATIONS FOR MEMBERSHIP IN THE APPLICANT. THE WITNESS INFORMED THE BOARD THAT VITTORIO AND RALPH IN THE PRESENCE OF THE OWNER TOLD THE EMPLOYEES TO SIGN FOR THE APPLICANT AND, ALSO, THAT VITTORIO AND RALPH TOLD THE EMPLOYEES THAT IF THEY DID NOT SIGN THEY WOULD BE SENT HOME. AT THIS POINT MORE THAN HALF OF THE EMPLOYEES PRESENT COMMENCED TO SIGN APPLICATION CARDS IN THE PRESENCE OF VITTORIO, RALPH AND THE OWNER.

11. WE WERE IMPRESSED WITH THE SINCERITY AND DEMEANOUR OF VIDONE IN GIVING HIS TESTIMONY. DURING THE EXAMINATION IN CHIEF, HE GAVE HIS TESTIMONY WITHOUT EQUIVOCATION. HOWEVER, DURING CROSS-EXAMINATION, COUNSEL FOR THE APPLICANT HAD DIFFICULTY IN COMMUNICATING WITH THE WITNESS. IT APPEARED THAT VIDONE HAD DIFFICULTY IN UNDERSTANDING THE TWO INTERPRETERS PROVIDED BY THE BOARD. THIS IN TURN GAVE RISE TO VAGUENESS AND CONFUSION IN SOME OF VIDONE'S ANSWERS. HOWEVER, NOTWITHSTANDING HIS VAGUENESS AND CONFUSION UPON CROSS-EXAMINATION, THE BOARD ACCEPTS THE TRUTHFULNESS OF HIS TESTIMONY. WE PARTICULARLY NOTE THE BEARING OF THIS ORDINARY WORKINGMAN WHO SPENT AN ENTIRE DAY IN THE WITNESS-BOX AND WHO WAS CLEARLY DEEPLY CONCERNED WITH THE EFFECT OF LOSING A DAY'S PAY AND POSSIBLE FUTURE EMPLOYMENT AND WITH THE EFFECT THESE MATTERS WOULD HAVE ON HIS ABILITY TO PROVIDE FOOD AND SHELTER FOR HIS FAMILY.

12. THE TESTIMONY OF CHIKOFFSKY, IN OUR VIEW, IN NO WAY CASTS DOUBT ON THE CREDIBILITY OF VIDONE'S EVIDENCE. THE EVIDENCE OF ANTONINO FIGLIANO DOES NOT CONTRADICT THE EVIDENCE OF VIDONE, SINCE IT IS CLEAR THAT THE FORMER WAS IN A SHACK BETWEEN 7:00 AND 7:30 A.M. ON MAY 4, 1970 WHEN THE LATTER AND OTHER EMPLOYEES OF THE RESPONDENT WERE OUTSIDE THE SHACK AND SIGNING MEMBERSHIP CARDS IN THE APPLICANT. IT IS, THEREFORE, NOT SURPRISING THAT A MAN INSIDE A SHACK BETWEEN 7:00 AND 7:30 A.M. ON MAY 4, 1970, WAS NOT AWARE OF ANYTHING UNUSUAL HAPPENING OUTSIDE THE SHACK DURING THIS HALF-HOUR.

13. THE TESTIMONY OF VITTORIO D'ALESSANDRO, A FOREMAN OF THE RESPONDENT'S STEELMEN DURING MAY OF 1970, AGREED WITH THE EVIDENCE OF VIDONE THAT THERE WERE ORGANIZERS OF THE APPLICANT ON THE STREET ADJACENT TO THE RESPONDENT'S JOB-SITE DURING MAY 1970. THERE WAS, HOWEVER, NO DENIAL BY D'ALESSANDRO THAT HE DID NOT ON MAY 4, 1970, COERCE EMPLOYEES OF THE RESPONDENT TO SIGN MEMBERSHIP CARDS IN THE APPLICANT.

14. HAVING REGARD TO THE EVIDENCE BEFORE US CONCERNING THE COUNCIL'S ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT AGAINST THE APPLICANT AND THE RESPONDENT AND TO THE REPRESENTATIONS OF THE PARTIES THEREON, WE FIND THAT AT LEAST THIRTY OF THE EMPLOYEES WHO SIGNED MEMBERSHIP CARDS IN THE APPLICANT ON MAY 4, 1970, DID SO AS A RESULT OF THE COERCIVE BEHAVIOUR REFERRED TO IN PARAGRAPH 10 OF TWO NON-WORKING FOREMEN IN THE EMPLOY OF THE RESPONDENT. THESE MEMBERSHIP CARDS WERE SIGNED UNDER CONDITIONS WHICH MANIFESTLY IMPAIRED THE FREEDOM OF THESE EMPLOYEES TO FREELY SELECT THEIR OWN BARGAINING AGENT. IN ACCORDANCE WITH THE LONG-STANDING PRACTICE OF THE BOARD, WE ARE UNABLE TO ACCEPT ANY OF THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT IN THIS APPLICATION.

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16. HAVING REGARD TO ALL OF THE EVIDENCE BEFORE US AND TO THE REPRESENTATIONS OF THE PARTIES, WE ARE SATISFIED THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 13, 1970, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

17. IN THE RESULT, THEREFORE, THIS APPLICATION FOR CERTIFICATION IS DISMISSED.

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DECISION OF BOARD MEMBER H. F. IRWIN: JULY 13, 1971.

1. AS I DID NOT HEAR THE VIVA VOCE EVIDENCE ADDUCED AT THE HEARINGS IN THIS MATTER, I CANNOT COMMENT ON THE DEMEANOUR OF THE WITNESSES OR DRAW ANY CONCLUSIONS THEREFROM. I AM OBLIGED TO MAKE MY DECISION BASED ON THE NOTES TAKEN AT THE HEARINGS BY THE LATE MR. ROBERT W. TEAGLE WHO WAS THE EMPLOYER REPRESENTATIVE ON THE ORIGINAL PANEL HEARING THIS CASE. EXEMPLIFYING HIS USUAL THOROUGHNESS, MR. TEAGLE'S NOTES ARE VERY COMPREHENSIVE AND GIVE ALMOST A VERBATIM REPORT OF THE QUESTIONS PUT TO THE WITNESSES BY COUNSEL AND THE ANSWERS GIVEN BY THEM.

2. AT THE HEARING ON OCTOBER 8, 1970 THE CHAIRMAN OF THE PANEL ANNOUNCED THAT THE REVISED LIST OF EMPLOYEES IN THE BARGAINING UNIT CONTAINED 137 NAMES. THE APPLICANT UNION FILED 90 APPLICATIONS FOR MEMBERSHIP EACH ACCOMPANIED BY A RECEIPT SHOWING THE PAYMENT OF \$1.00 AS UNION DUES BY THE EMPLOYEE CONCERNED. OF THE 90 APPLICATIONS FILED,

88 WERE MEMBERS OF THE APPLICANT ON MAY 13, 1970, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT TO BE THE TIME FOR PURPOSE OF ASCERTAINING MEMBERSHIP UNDER THE PROVISIONS OF SECTION 7(1) OF THE SAID ACT. THESE 88 MEMBERS CONSTITUTE 64.2% OF THE EMPLOYEES IN THE BARGAINING UNIT. IF IT WERE NOT FOR THE ALLEGATIONS MADE BY THE COUNCIL OF CONCRETE-FORMING TRADE UNIONS, INTERVENER #2, THAT CERTAIN MEMBERSHIP APPLICATIONS HAD BEEN SECURED BY COERCION ON THE PART OF THE EMPLOYER, THE BOARD WOULD BE OBLIGED TO CERTIFY THE APPLICANT UNION AS BARGAINING AGENT. IN THE CIRCUMSTANCES, THE BOARD WAS REQUIRED TO HEAR THE EVIDENCE TO BE PRESENTED BY INTERVENER #2 IN SUPPORT OF ITS ALLEGATIONS OF UNFAIR PRACTICES AND ANY REBUTTAL EVIDENCE ADDUCED BY THE OTHER PARTIES IN REPLY.

3. GUISEPPE VIDONE WAS CALLED AS A WITNESS BY INTERVENER #2. HE STATED UNEQUIVOCALLY THAT HE WOULD NOT HAVE SIGNED AN APPLICATION FOR MEMBERSHIP IN THE APPLICANT UNION IF HE HAD NOT BEEN TOLD BY VITTORIO (D'ALESSANDRO), A NON-WORKING FOREMAN IN THE EMPLOY OF THE RESPONDENT, THAT HE WOULD BE SENT HOME IF HE DID NOT DO SO. SUCH ACTION BY A COMPANY OFFICIAL HAVING MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT IS A SEVERE FORM OF COERCION AND INTIMIDATION AND IS STRICTLY PROHIBITED UNDER THE PROVISIONS OF SECTIONS 48 AND 52 OF THE ACT. EVIDENCE OF MEMBERSHIP, IF PROVEN TO HAVE BEEN SECURED UNDER THESE CIRCUMSTANCES, HAS NEVER BEEN ACCEPTED OR GIVEN WEIGHT BY THIS BOARD. IN MY OPINION, INTERVENER #2 ESTABLISHED A PRIMA FACIE CASE IN RESPECT OF ITS ALLEGATIONS.

4. THE REBUTTAL EVIDENCE ADDUCED BY THE APPLICANT UNION DID NOT WEAKEN THE PRIMA FACIE CASE MADE BY INTERVENER #2.

5. THE RESPONDENT COMPANY MADE NO FORMAL DENIAL OF THE ALLEGATIONS THAT IT ASSISTED THE APPLICANT UNION BY INTIMIDATING EMPLOYEES TO SIGN APPLICATIONS FOR MEMBERSHIP. MOREOVER, THE RESPONDENT'S COUNSEL DID NOT PARTICIPATE IN CROSS-EXAMINATION OF THE INTERVENER'S OR APPLICANT'S WITNESSES NOR DID HE SUBMIT REBUTTAL EVIDENCE OR MAKE ARGUMENT AS TO WHAT CONCLUSION THE BOARD SHOULD ARRIVE AT ON THE BASIS OF THE EVIDENCE BEFORE IT. BEING A CAPABLE AND EXPERIENCED COUNSEL, I CAN ONLY ASSUME THAT HE WAS CARRYING OUT THE INSTRUCTIONS OF HIS CLIENT.

6. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, I FIND THAT THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT UNION IS UNACCEPTABLE IN ITS ENTIRETY AND THE APPLICATION IS DISMISSED.

479-71-R: KARL HULT, GABRIEL DOUVILLE, LES MCPHEE, MAURICE GREZEL (APPLICANTS) V. BAKERY AND CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 483 (RESPONDENT) V. SOO DAIRIES LIMITED (INTERVENER).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND E. BOYER.

APPEARANCES AT THE HEARING: GEORGE W. PRIDDLE, Q.C., KARL HULT AND LES MCPHEE FOR THE APPLICANTS, L. A. MACLEAN FOR THE RESPONDENT, W. WINKLER FOR THE INTERVENER.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER J. D. BELL:
JULY 12, 1971.

1. THE APPLICANTS APPLIED ON MAY 26, 1971 FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT UNDER THE PROVISIONS OF SECTION 43 OF THE ACT.
2. ON APRIL 21, 1971, ONE OF THE APPLICANTS IN THIS MATTER HAD MADE AN EARLIER APPLICATION UNDER SECTION 43 FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT FOR THE SAME UNIT OF EMPLOYEES WITH WHICH WE ARE HERE CONCERNED.
3. THE FIRST APPLICATION WAS DISMISSED BY THE BOARD ON MAY 5, 1971 (BOARD FILE 318-71-R) ON THE GROUNDS THAT WHILE THERE WAS SATISFACTORY EVIDENCE WITH RESPECT TO THE MANNER IN WHICH EACH OF THE SIGNATURES ON THE DOCUMENT FILED IN SUPPORT OF THAT APPLICATION HAD BEEN OBTAINED, NO ONE WAS CALLED BY THE APPLICANT TO TESTIFY CONCERNING THE ORIGINATION OF THE DOCUMENT. AT THE HEARING IN THE INSTANT CASE, COUNSEL FOR THE APPLICANTS ASSUMED FULL RESPONSIBILITY FOR THE APPLICANT'S FAILURE TO CALL EVIDENCE OF ORIGINATION IN THE FIRST CASE AND ADMITTED THAT THE MISTAKE WAS OCCASIONED BY HIS LACK OF KNOWLEDGE OF THE BOARD'S REQUIREMENTS IN THESE MATTERS.
4. THE FACTS OF THIS CASE ARE NOT IN DISPUTE. THE RESPONDENT AND THE INTERVENER WERE PARTIES TO A COLLECTIVE AGREEMENT WHICH WAS EFFECTIVE FROM JUNE 21, 1969 TO JUNE 18, 1971. BY LETTER DATED APRIL 19, 1971, THE RESPONDENT NOTIFIED THE INTERVENER THAT IT WISHED TO BARGAIN FOR RENEWAL OF THE COLLECTIVE AGREEMENT BETWEEN THEM. HOWEVER, BECAUSE OF THE PENDING TERMINATION APPLICATION (BOARD FILE 318-71-R) NO BARGAINING MEETINGS WERE HELD. WHEN THE FIRST APPLICATION WAS DISMISSED BY THE BOARD'S DECISION OF MAY 5, 1971, THE RESPONDENT RENEWED ITS REQUEST TO BARGAIN BY LETTER DATED MAY 21, 1971 AND A MEETING WAS SCHEDULED FOR MAY 27, 1971. HOWEVER, IN VIEW OF THE MAKING OF THE INSTANT APPLICATION, THE RESPONDENT AND THE INTERVENER DID NOT MEET AS SCHEDULED OR AT ANY OTHER TIME PRIOR TO THE HEARING IN

THIS MATTER WHICH WAS HELD ON JUNE 14, 1971.

5. THE RESPONDENT ARGUED THAT THIS APPLICATION, HAVING BEEN MADE FOLLOWING THE DISMISSAL OF THE EARLIER APPLICATION, SHOULD BE DISMISSED UNDER THE PRINCIPLES LAID DOWN BY THE BOARD IN THE TRINIDAD LEASEHOLDS (CANADA) LTD. CASE 52 CLLC ¶17,005, WHICH WAS FOLLOWED BY THE BOARD IN THE WINDSOR LUMBER CO. LTD. CASE 58 CLLC ¶18,104. IT WAS THE RESPONDENT'S POSITION THAT THE BOARD HAD JURISDICTION TO REFUSE TO ENTERTAIN THIS APPLICATION PURSUANT TO THE PROVISIONS OF SECTION 77(2)(1) OF THE ACT.

6. SECTION 77(2)(1) OF THE ACT READS AS FOLLOWS:

77.--(2) WITHOUT LIMITING THE GENERALITY OF SUBSECTION 1, THE BOARD HAS POWER,

- (1) TO BAR AN UNSUCCESSFUL APPLICANT FOR ANY PERIOD NOT EXCEEDING TEN MONTHS FROM THE DATE OF THE DISMISSAL OF THE UNSUCCESSFUL APPLICATION, OR TO REFUSE TO ENTERTAIN A NEW APPLICATION BY AN UNSUCCESSFUL APPLICANT OR BY ANY OF THE EMPLOYEES AFFECTED BY AN UNSUCCESSFUL APPLICATION OR BY ANY PERSON OR TRADE UNION REPRESENTING SUCH EMPLOYEES WITHIN ANY PERIOD NOT EXCEEDING TEN MONTHS FROM THE DATE OF THE DISMISSAL OF THE UNSUCCESSFUL APPLICATION;

7. IT IS CLEAR FROM THE EVIDENCE THAT THE RESPONDENT WAS NOT LAX IN ITS EFFORTS TO BARGAIN FOR A RENEWAL OF THE COLLECTIVE AGREEMENT WITH THE INTERVENER. IT IS EQUALLY CLEAR, HOWEVER, THAT THE FIRST TERMINATION APPLICATION WAS MADE WITHIN THE FIRST FEW DAYS FOLLOWING THE COMMENCEMENT OF THE "OPEN PERIOD" DURING WHICH SUCH AN APPLICATION COULD BE MADE UNDER SECTIONS 43 AND 46 OF THE ACT. THE SECOND APPLICATION WAS ALSO MADE EXPEDITIOUSLY FOLLOWING THE DISMISSAL OF THE FIRST APPLICATION. INDEED, THE "OPEN PERIOD" CONTEMPLATED BY SECTION 46 EVEN EXTENDED BEYOND THE HEARING OF JUNE 14, 1971 IN THIS MATTER. THERE WAS NO EVIDENCE WHICH WOULD SUGGEST THAT THE DISMISSAL OF THE FIRST APPLICATION WAS CAUSED BY ANYTHING OTHER THAN AN HONEST MISTAKE OR THAT THE APPLICATIONS WERE INTENTIONALLY DESIGNED TO UNDULY INTERFERE WITH THE RESPONDENT'S ATTEMPTS TO BARGAIN WITH THE INTERVENER. THE TWO APPLICATIONS WERE MADE EXPEDITIOUSLY AND WERE MADE WITHIN THE TIME PERIOD CONTEMPLATED BY SECTION 46 OF THE ACT. THERE WAS NO SUGGESTION THAT THEY WERE DESIGNED TO MERELY HARASS THE RESPONDENT.

8. SINCE IT IS READILY APPARENT THAT THE APPLICATION IN THIS MATTER IS TIMELY UNDER THE RELEVANT PROVISIONS OF THE ACT, WE HAVE NO JURISDICTION TO MAKE A FINDING THAT IT IS UNTIMELY. IN REGARD TO THE ISSUE CONCERNING THE EXERCISE OF THE BOARD'S JURISDICTION, SEE METROPOLITAN LIFE INSURANCE V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 67 CLLC ¶16,026 (OLRB), 68 DLR (2d) 109, (1969) 2 O.R. 37 (HIGH COURT); 2 DLR (3d) 652, (1969) 1 OR 412 (COURT OF APPEAL); 70 CLLC ¶14,008; 11 DLR (3d) 336 (SCC).

9. ANY JURISDICTION WE HAVE TO REFUSE TO ENTERTAIN THIS APPLICATION MUST THEREFORE BE FOUND IN SECTION 77(2)(1) OF THE ACT. WHILE WE HAVE A DISCRETION TO REFUSE TO ENTERTAIN A NEW APPLICATION FOLLOWING THE DISMISSAL OF AN EARLIER APPLICATION, THAT DISCRETION MUST BE EXERCISED IN A JUDICIOUS MANNER. OUR DISCRETION CANNOT BE ARBITRARILY PREDETERMINED BY ADOPTING PRESENT RULES SUCH AS THE DOCTRINE THAT A PARTY IS ONLY ENTITLED TO "ONE BITE OF THE CHERRY". BEFORE OUR DISCRETION CAN BE JUDICIOUSLY EXERCISED WE MUST ASSESS ALL RELEVANT FACTS OF THE CASE.

10. ON THE FACTS OF THE CASE AS SET OUT ABOVE, WE ARE OF THE VIEW THAT TO DISMISS THE INSTANT APPLICATION WOULD BE TOO HARSH A RESULT FOR THE BOARD TO ADOPT. THE MISTAKE THAT LED TO THE DISMISSAL OF THE FIRST APPLICATION, WHILE FATAL TO THAT APPLICATION, WAS INNOCENTLY MADE. TO FIND THAT SUCH AN INNOCENT MISTAKE SHOULD DEPRIVE THE EMPLOYEES OF THE REMEDY AFFORDED BY SECTION 43 OF THE ACT IN THE ABSENCE OF EVIDENCE OF HARASSMENT OF THE RESPONDENT OR A FAILURE TO ACT EXPEDITIOUSLY, THEREBY CAUSING UNDUE INTERFERENCE WITH BARGAINING, WOULD IN OUR VIEW BE A HIGH-HANDED AND ARBITRARY TREATMENT OF THE FACTS OF THIS CASE. THE MERE FACT THAT THERE HAS BEEN AN UNSUCCESSFUL APPLICATION (WHETHER IT BE FOR CERTIFICATION OR FOR TERMINATION) DOES NOT OF ITSELF PRECLUDE THE MAKING OF A SUBSEQUENT TIMELY APPLICATION. TO FIND OTHERWISE WOULD BE TANTAMOUNT TO A REFUSAL BY THE BOARD TO EXERCISE ITS DISCRETION UNDER SECTION 77(2)(1) IN A JUDICIOUS MANNER.

11. ALTHOUGH THERE HAS BEEN SOME INTERFERENCE WITH BARGAINING AS A RESULT OF THESE APPLICATIONS, SINCE THESE APPLICATIONS WERE MADE AND HEARD BY THE BOARD WITHIN THE TWO MONTH OPEN PERIOD CONTEMPLATED BY SECTION 46 OF THE ACT, THE INTERFERENCE CAUSED BY THE APPLICATIONS CANNOT BE CHARACTERIZED AS "UNDUE" INTERFERENCE WHICH WOULD CAUSE THE BOARD TO EXERCISE ITS DISCRETION UNDER SECTION 77(2)(1) AGAINST THE APPLICANTS.

12. WE THEREFORE FIND NO PROPER CAUSE TO REFUSE TO ENTERTAIN THE INSTANT APPLICATION IN THIS MATTER AND WE ACCORDINGLY DISMISS THE RESPONDENT'S OBJECTIONS TO THE APPLICATION.

13. WE ARE SATISFIED WITH THE APPLICANT'S EVIDENCE CONCERNING THE ORIGINATION OF THE DOCUMENT FILED IN SUPPORT OF THIS APPLICATION WHICH EVIDENCE INCLUDED THE EVIDENCE CONCERNING THE ORIGINATION OF THE DOCUMENT FILED IN SUPPORT OF THE FIRST UNSUCCESSFUL APPLICATION FROM WHICH THIS APPLICATION FLOWED. WE ARE FURTHER SATISFIED WITH THE EVIDENCE CONCERNING THE MANNER IN WHICH EACH OF THE SIGNATURES ON THE DOCUMENTS WAS OBTAINED.

14. HAVING REGARD THEREFORE TO ALL THE EVIDENCE AND THE REPRESENTATIONS MADE TO THE BOARD, THE BOARD IS SATISFIED ON THE BASIS OF THE EVIDENCE BEFORE IT THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF SOO DAIRIES LIMITED IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, HAD VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION ON JUNE 4, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING THE NUMBER OF PERSONS WHO HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION UNDER SECTION 43(3) OF THE SAID ACT.

15. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF SOO DAIRIES LIMITED. THOSE ELIGIBLE TO VOTE ARE ALL EMPLOYEES OF SOO DAIRIES LIMITED AT ITS PLANT IN SAULT STE. MARIE, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, SALES SUPERVISORS, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN.

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17. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER E. BOYER: JULY 12, 1971.

WHILE I CONCUR IN THE REASONING EXPRESSED IN THE BOARD'S DECISION IN THIS MATTER, I DO SO IN RECOGNITION OF THE FACT THAT THE RESULTS OF THIS CASE ADVERSELY AFFECT THE RESPONDENT UNION'S INTEREST. HOWEVER, THE REASONING ADOPTED BY THE BOARD IN THIS CASE IS IN ACCORD WITH THE REASONING OF THE EMPLOYEE REPRESENTATIVES OF THE BOARD WHICH WAS EXPRESSED BY THEM IN THEIR DISSENTS IN THE TRINIDAD LEASEHOLDS CASE AND THE WINDSOR LUMBER CASE REFERRED TO ABOVE. IF THE BOARD HAD ADOPTED THIS REASONING IN THE EARLIER CASES WE WOULD NOT NOW FIND OURSELVES IN THE POSITION WHERE A UNION SUFFERS FROM THE RESULT OF THE

BOARD'S REASONING IN EACH OF THE THREE CASES. IT IS TO BE HOPED THAT THE BOARD WILL APPLY ITS DISCRETION IN A "JUDICIOUS" MANNER IN SOME CASE WHERE IT WILL BE IN THE UNION'S INTEREST.

717-71-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION (APPLICANT) V. CO-OPERATORS INSURANCE ASSOCIATION OF GUELPH (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS D. B. ARCHER AND F.W. MURRAY.

APPEARANCES AT THE HEARING: WILFRED PEEL AND GEOFFREY FANAKEN FOR THE APPLICANT; J. B. NOONAN, ROY TOWERS AND ERNIE MOORES FOR THE RESPONDENT; BERT RAPHAEL FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: JULY 27, 1971.

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3. THE PARTIES WERE IN AGREEMENT WITH RESPECT TO THE BARGAINING UNIT APPROPRIATE FOR COLLECTIVE BARGAINING WITH THE EXCEPTION OF THE CLASSIFICATION OF OUTSIDE SALES REPRESENTATIVES. THE APPLICANT PROPOSED THE EXCLUSION OF THE OUTSIDE SALES REPRESENTATIVES FROM THE PROPOSED BARGAINING UNIT WHILE THE RESPONDENT PROPOSED THEIR INCLUSION.

IT IS THE USUAL PRACTICE OF THE BOARD NOT TO INCLUDE EMPLOYEES WHO WORK OUTSIDE AN EMPLOYER'S PREMISES IN A BARGAINING UNIT OF EMPLOYEES WHO WORK WITHIN AN EMPLOYER'S PREMISES UNLESS SPECIAL CIRCUMSTANCES EXIST WITH REFERENCE TO THE EMPLOYEES WHO WORK OUTSIDE AN EMPLOYER'S PREMISES. COUNSEL FOR THE RESPONDENT CONCEDED THAT THERE WERE NO SPECIAL CIRCUMSTANCES INVOLVED IN THIS APPLICATION THAT WOULD JUSTIFY THE INCLUSION OF THE OUTSIDE SALES REPRESENTATIVES IN THE BARGAINING UNIT. HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT THE OUTSIDE SALES REPRESENTATIVES ARE NOT APPROPRIATE FOR INCLUSION IN A BARGAINING UNIT OF EMPLOYEES WHO WORK WITHIN THE RESPONDENT'S PREMISES.

4. HAVING REGARD TO THE FOREGOING, THE BOARD FURTHER FINDS THAT ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT ITS TORONTO DIVISION, SAVE AND EXCEPT ASSISTANT SUPERVISORS, ADMINISTRATIVE ASSISTANTS, PERSONS ABOVE THE RANK OF ASSISTANT SUPERVISOR OR ADMINISTRATIVE ASSISTANT, EMPLOYEES IN THE PERSONNEL DEPARTMENT, CONFIDENTIAL SECRETARIES, OUTSIDE SALES REPRESENTATIVES AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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384-71-R: HAMILTON AND DISTRICT SHEET METAL CONTRACTORS INC. (APPLICANT) V. SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION LOCAL UNION 537 HAMILTON ONTARIO BRANCH (RESPONDENT) V. LOCAL UNION 736 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (INTERVENER #1) V. LOCAL UNION 67 UNITED ASSOCIATION (INTERVENER #2) V. LOCAL UNION 105 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (INTERVENER #3).

BEFORE: G. W. REED, Q.C., CHAIRMAN AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: BRIAN W. MORISON, Q.C. AND DR. GEORGE MOLLER APPEARING FOR THE APPLICANT; RONALD S. TAYLOR AND EARL WEAVER APPEARING FOR THE RESPONDENT; A. G. MATTHEWS AND WILLIAM W. CORBETT APPEARING FOR INTERVENER #3; AND WILLIAM J. CROCKER APPEARING ON BEHALF OF CANADIAN JOHNS-MANVILLE CO. LIMITED.

DECISION OF THE BOARD: JULY 26, 1971.

1. AT THE HEARING IN THIS MATTER IT WAS APPARENT THAT CERTAIN EMPLOYERS SERVED WITH NOTICE OF THIS APPLICATION IN FORM 67 HAD NOT MADE THE REQUIRED FILINGS IN FORM 68 AND SCHEDULE H WITH THE BOARD. ONE OF THESE EMPLOYERS HAS BEEN CONTACTED AND THE PERTINENT INFORMATION OBTAINED. MR. H. C. DRAPER, EXAMINER, IS APPOINTED TO EXAMINE THE FOLLOWING EMPLOYERS WHO HAVE NOT FILED THE REQUESTED INFORMATION:

INPRO LTD. (E-27); AND
ARTHUR G. MCKEE COMPANY LIMITED (E-39);

FOR THE PURPOSE OF OBTAINING INFORMATION AS TO WHETHER THESE EMPLOYERS HAVE HAD EMPLOYEES AFFECTED BY THE APPLICATION IN THE YEAR IMMEDIATELY PRECEDING MAY 3RD, 1971, AND TO COMPLETE THE APPROPRIATE SCHEDULE H.

2. MR. H. C. DRAPER, EXAMINER, IS FURTHER APPOINTED TO INQUIRE INTO THE STATUS OF BENNETT & WRIGHT CONTRACTORS LIMITED AS AN EMPLOYER AFFECTED BY THIS APPLICATION.

3. OF THE EMPLOYER INTERVENTIONS IN FORM 68 FILED WITH THE BOARD BY INDIVIDUAL EMPLOYER INTERVENERS SOME HAVE INDICATED THAT THE WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING THE DATE OF THE MAKING OF THIS APPLICATION WAS NOT A REPRESENTATIVE PERIOD FOR DETERMINING THE NUMBER OF EMPLOYEES NORMALLY EMPLOYED BY THE EMPLOYER INTERVENER. THE BOARD'S FORM 68 REQUIRES THE EMPLOYER MAKING SUCH A REPRESENTATION TO GIVE DETAILS. ACCORDINGLY, THE BOARD WILL NOT ENTERTAIN THESE REPRESENTATIONS FROM EMPLOYERS WHO HAVE NOT GIVEN ANY DETAILS CONCERNING THIS MATTER AND WHO HAVE NOT APPEARED AT THE HEARING. THOSE EMPLOYERS

WHO HAVE INDICATED THAT THE PAYROLL PERIOD IN QUESTION IS NOT REPRESENTATIVE AND WHO HAVE GIVEN DETAILS, WILL BE GIVEN AN OPPORTUNITY TO MAKE SUCH REPRESENTATIONS TO THE EXAMINER APPOINTED IN THIS MATTER. MR. H. C. DRAPER IS THEREFORE FURTHER DIRECTED TO CONTACT THE FOLLOWING EMPLOYERS:

BENNETT & WRIGHT CONTRACTORS
LIMITED (E-7);
DEWCON STRUCTURES LIMITED (E-15);
FRASER-BRACE ENGINEERING COMPANY
LIMITED (E-20);
MACKINNON MITCHELL & ASSOCIATED
LIMITED (E-37);
R. MEAD STEEL ERECTORS (E-40);
ROBERTS SHEET METAL COMPANY
LIMITED (E-48);
SCHREIBER BROTHERS LIMITED (E-53);
AND JOHN E. SMITH (E-55)

AND OBTAIN THREE ALTERNATE WEEKLY PAYROLL PERIODS WITHIN THE YEAR IMMEDIATELY PRECEDING MAY 3RD, 1971, WHICH THE EMPLOYER INTERVENER CONSIDERS REPRESENTATIVE FOR DETERMINING THE NUMBER OF EMPLOYEES NORMALLY AFFECTED BY THIS APPLICATION, TOGETHER WITH A SCHEDULE H FOR EACH SUCH PERIOD.

571-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. 227223 EARTH MOVING LIMITED TRADING AS MAPLE EARTH MOVING COMPANY (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS D. B. ARCHER AND F. W. MURRAY.

DECISION OF THE BOARD: JULY 19, 1971.

1. IN THIS APPLICATION FOR CERTIFICATION THE APPLICANT STATED THAT THE NAME OF THE RESPONDENT WAS "MAPLE-EARTH MOVING LTD." IN A REPLY FILED WITH THE BOARD IN THIS MATTER THE CORRECT NAME OF THE RESPONDENT IS STATED AS "227223 EARTH MOVING LIMITED TRADING AS MAPLE EARTH MOVING COMPANY."

2. THE RESPONDENT HAS REQUESTED A HEARING OF THE APPLICATION BY THE BOARD AND HAS STATED IN PARAGRAPH 14(3) OF ITS REPLY IN SUPPORT OF THIS REQUEST:

- "(1) 227223 EARTH MOVING LIMITED IS NOT THE PARTY NAMED AS RESPONDENT EITHER IN THE APPLICATION FOR CERTIFICATION OR IN THE NOTICES TO EMPLOYEES WHICH IT WAS INSTRUCTED BY THE BOARD TO POST ON ITS PREMISES.
- (2) THE RESPONDENT NAMED IN THE APPLICATION FOR CERTIFICATION IS NON-EXISTENT AND THE APPLICATION IS THEREFORE A NULLITY.
- (3) ALTERNATIVELY, IF THE APPLICATION IS NOT A NULLITY, AND THE INTENDED PARTY HAS BEEN INCORRECTLY NAMED, THEN IT IS SUBMITTED THAT AN AMENDMENT MAY BE MADE BUT THE INTENDED PARTY MUST BE RE-SERVED IN ITS PROPER NAME."

3. THE BOARD HAS CONSIDERED THE REPRESENTATIONS BEFORE IT AND IS OF THE OPINION THAT THIS APPLICATION IS NOT A NULLITY. THE APPLICANT HAS APPARENTLY MADE A MISTAKE IN DESCRIBING THE RESPONDENT HEREIN.

HAVING REGARD TO THE SIMILARITY OF THE TRADING NAME WHICH THE RESPONDENT HAS STATED IN ITS CORRECT NAME AND THE NAME OF THE RESPONDENT AS SET FORTH BY THE APPLICANT, THE BOARD IS SATISFIED THAT A BONA FIDE MISTAKE HAS BEEN MADE WITH THE RESULT THAT THE PROPER RESPONDENT HAS BEEN INCORRECTLY NAMED. IT IS ORDERED THAT THE RESPONDENT BE CORRECTLY NAMED AS "227223 EARTH MOVING LIMITED TRADING AS MAPLE EARTH MOVING COMPANY".

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30-70-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. CASWELL HOTEL (SAULT) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: ROBIN McARTHUR, LEO GRANDBOIS AND GILLES GAUDREAU FOR THE APPLICANT; LLOYD J. VALIN AND RICHARD QUINN FOR THE RESPONDENT; GEORGE W. PRIDDLE, Q.C., JOE FALCIONI, JOYCE McLELLAN, R. BEYETTE AND HARRY KENNEDY FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: JULY 16, 1971.

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2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

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4. THE APPLICANT IS PROPOSING A BARGAINING UNIT OF ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS BEVERAGE ROOMS, COCKTAIL AND DINING LOUNGES. THE RESPONDENT AND THE OBJECTORS HAVE PROPOSED A UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING OF EMPLOYEES OF THE RESPONDENT IN ITS BEVERAGE ROOMS AND COCKTAIL LOUNGE. THE RESPONDENT ALSO OPERATES A COFFEE SHOP AND THE APPLICANT HAS NOT PROPOSED THE INCLUSION OF THE COFFEE SHOP EMPLOYEES IN THE BARGAINING UNIT. THE RESPONDENT AND THE OBJECTORS TAKE THE POSITION THAT THE DINING LOUNGE EMPLOYEES HAVE A COMMUNITY OF INTEREST WITH THE COFFEE SHOP EMPLOYEES AND NOT WITH THE EMPLOYEES IN THE BEVERAGE ROOMS AND COCKTAIL LOUNGE. THE RESPONDENT AND THE OBJECTORS ARGUE THAT SINCE THE COFFEE SHOP EMPLOYEES AND THE DINING LOUNGE EMPLOYEES SHARE A COMMUNITY OF INTEREST THEY SHOULD BE EXCLUDED FROM THE APPROPRIATE BARGAINING UNIT.

5. THE EVIDENCE DISCLOSES THAT THE DINING LOUNGE EMPLOYEES ARE ENGAGED PRIMARILY IN THE HANDLING AND SALE OF FOOD WHEREAS THE EMPLOYEES IN THE BEVERAGE ROOMS AND COCKTAIL LOUNGE ARE ENGAGED PRIMARILY IN THE HANDLING AND SALE OF ALCOHOLIC BEVERAGES. THE DINING LOUNGE EMPLOYEES ARE SUPERVISED BY THE CHEF WHEREAS THE EMPLOYEES IN THE BEVERAGE ROOMS AND COCKTAIL LOUNGE ARE SUPERVISED BY ANOTHER PERSON. THERE IS NO INTERCHANGE BETWEEN EMPLOYEES IN THE DINING LOUNGE AND THE EMPLOYEES IN THE BEVERAGE ROOM AND COCKTAIL LOUNGE. THE EMPLOYEES IN THE DINING LOUNGE RECEIVE A LOWER RATE OF PAY THAN EMPLOYEES IN THE BEVERAGE ROOMS AND COCKTAIL LOUNGE. HOWEVER, THE COFFEE SHOP EMPLOYEES RECEIVE THE SAME RATE OF PAY AS THE DINING LOUNGE EMPLOYEES AND THERE IS SOME INTERCHANGE BETWEEN EMPLOYEES IN THE COFFEE SHOP AND EMPLOYEES IN THE DINING LOUNGE.

HAVING REGARD TO THE FOREGOING THE BOARD FINDS THAT THE DINING LOUNGE EMPLOYEES SHARE A COMMUNITY OF INTEREST WITH THE COFFEE SHOP EMPLOYEES RATHER THAN WITH EMPLOYEES IN THE BEVERAGE ROOMS AND COCKTAIL LOUNGE. THE BOARD FURTHER FINDS THAT THE DINING LOUNGE EMPLOYEES ARE NOT APPROPRIATE FOR INCLUSION IN A UNIT OF EMPLOYEES IN THE RESPONDENT'S BEVERAGE ROOMS AND COCKTAIL LOUNGE.

6. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE EMPLOYED IN ITS BEVERAGE ROOMS AND COCKTAIL LOUNGE SAVE AND EXCEPT BEVERAGE ROOM AND LOUNGE MANAGERS, PERSONS ABOVE THE RANKS OF BEVERAGE ROOM AND LOUNGE MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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51-70-R: TEXTILE WORKERS UNION OF AMERICA, AFL-CIO-CLC (APPLICANT)
V. FEDERAL PACKAGING AND PARTITION COMPANY LIMITED (RESPONDENT) V.
FEDERAL PACKAGING EMPLOYEES ASSOCIATION (INTERVENER) V. GROUP OF EM-
PLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS
 P. J. O'KEEFFE AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG AND W. CLARK FOR THE
 APPLICANT, MICHAEL GORDON AND L. BARRETT FOR THE RESPONDENT, W. G.
 POSTHUMUS FOR THE INTERVENER AND OBJECTORS.

DECISION OF J.H. BROWN, Q.C., ALTERNATE CHAIRMAN AND BOARD MEMBER
 P.J. O'KEEFFE: JULY 30, 1971.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN
 THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

2. THE APPLICANT ON FEBRUARY 26, 1971 APPLIED TO THE BOARD FOR
 CERTIFICATION AS BARGAINING AGENT FOR A UNIT COMPOSED OF ALL EMPLOYEES
 OF THE RESPONDENT EMPLOYED IN ITS PLANT AT AJAX, SAVE AND EXCEPT FORE-
 MEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY,
 OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN
 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION
 PERIOD. THE RESPONDENT IN ITS REPLY AGREED WITH THE UNIT PROPOSED
 BY THE APPLICANT.

3. THE REPLY OF THE RESPONDENT AND A LIST OF EMPLOYEES IN THE
 ABOVE DESCRIBED UNIT ON THE PRESCRIBED SCHEDULES WERE RECEIVED BY THE
 BOARD ON MARCH 8, 1971. COUNSEL FOR THE RESPONDENT BY TELEGRAM DATED
 MARCH 11, 1971 ADVISED THE BOARD THAT THE NAMES OF GLADYS DALE AND
 ANNE (N.E.) JOHNSTON, BOTH OF WHOM ARE CLASSIFIED BY THE RESPONDENT
 AS FORELADIES, INADVERTENTLY HAD BEEN OMITTED FROM SCHEDULE 'A' AND
 REQUESTED THAT THEIR NAMES BE ADDED TO THE SAID SCHEDULE. COUNSEL IN
 HIS TELEGRAM EXPLAINED THAT HE HAD ALLOWED HIMSELF TO BE MISLED BY
 THE JOB TITLE AND ACCORDINGLY HAD NOT INCLUDED THE TWO NAMES ON THE
 LIST. COUNSEL ADVISED THE BOARD IN HIS TELEGRAM THAT SUBSEQUENT IN-
 QUIRIES HAD PERSUADED HIM THAT THESE TWO PERSONS OCCUPIED POSITIONS
 ANALOGOUS TO THAT OF A LEAD HAND OR WORKING FOREMAN.

4. AT THE INITIAL HEARING OF THE APPLICATION ON APRIL 21, 1971,
 COUNSEL FOR THE APPLICANT CHALLENGED THE INCLUSION IN THE BARGAINING
 UNIT OF THE TWO ABOVE NAMED PERSONS CLASSIFIED BY THE RESPONDENT AS
 FORELADIES. THE BOARD ACCORDINGLY APPOINTED AN EXAMINER TO INQUIRE
 INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF
 MRS. DALE AND MRS. JOHNSTON. UPON THE ISSUANCE OF THE EXAMINER'S

REPORT, BOTH COUNSEL FOR THE APPLICANT AND COUNSEL FOR THE RESPONDENT ADVISED THE BOARD THAT THEY WISHED TO MAKE ORAL REPRESENTATIONS AS TO THE DETERMINATION WHICH THE BOARD SHOULD MAKE WITH RESPECT TO MRS. DALE AND MRS. JOHNSTON BASED ON THE EVIDENCE CONTAINED IN THE REPORT.

5. THE CASE WAS LISTED FOR CONTINUATION OF HEARING FOR THE PURPOSE OF DEALING WITH ALL OUTSTANDING ISSUES INCLUDING THE MAKING OF REPRESENTATIONS WITH RESPECT TO THE REPORT OF THE EXAMINER. AT THE OUTSET OF THE SECOND HEARING ON THE APPLICATION ON JUNE 2, 1971, THE BOARD CALLED UPON THE PARTIES TO MAKE THEIR REPRESENTATIONS ON THE REPORT. COUNSEL FOR THE APPLICANT SUBMITS THAT MRS. DALE AND MRS. JOHNSTON EXERCISE MANAGERIAL AUTHORITY WITHIN THE MEANING OF SECTION 1(3) (b) OF THE LABOUR RELATIONS ACT AND THEREFORE SHOULD NOT BE INCLUDED IN THE BARGAINING UNIT. COUNSEL FOR THE RESPONDENT MADE THE EXACT OPPOSITE SUBMISSION. THE BOARD HAS CONSIDERED THE REPRESENTATIONS OF COUNSEL INCLUDING THOSE DECISIONS OF THE BOARD CITED IN SUPPORT OF THEIR RESPECTIVE POSITIONS.

6. THE PARTIES AGREED THAT THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER WITH RESPECT TO THE DUTIES AND RESPONSIBILITIES OF MRS. GLADYS DALE WOULD APPLY ALSO TO THE DUTIES AND RESPONSIBILITIES PERFORMED BY MRS. ANNE JOHNSTON. THE RELEVANT EVIDENCE OF MRS. DALE IS SUMMARIZED BELOW.

7. MRS. DALE'S IMMEDIATE SUPERVISOR IS MR. LES KNOTT, THE PLANT SUPERVISOR. SHE ALSO WORKS UNDER MR. BOB SMITH, THE PRODUCTION SUPERVISOR. MRS. DALE IS RESPONSIBLE FOR SOME TWENTY FEMALE PRODUCTION EMPLOYEES WHO WORK UNDER HER OVERALL DIRECTION AND CONTROL. THE FEMALE EMPLOYEES ASSIST THE MALE EMPLOYEES ON THE MACHINES. THE MALE EMPLOYEES ARE UNDER THE SUPERVISION OF A FOREMAN. WITH RESPECT TO THE FEMALE EMPLOYEES, MRS. DALE RECEIVES A SCHEDULE PREPARED IN THE OFFICE SHOWING WHICH GIRL IS TO WORK ON WHAT MACHINE EACH DAY. SHE IS RESPONSIBLE FOR SEEING THAT THE GIRLS WORK IN ACCORDANCE WITH THE SCHEDULE. THE FACTORY PRODUCTION ORDERS ARE PROVIDED TO HER BY THE OFFICE. BASED ON THIS MATERIAL, MRS. DALE IN TURN MAKES OUT WORK ORDERS WHICH SHE ASSIGNS TO THE GIRLS UNDER HER SUPERVISION. IN THE WORK ORDERS WHICH SHE PREPARES, MRS. DALE SETS OUT THE QUANTITY, SIZE AND NUMBER OF CARTON PARTITIONS WHICH ARE TO BE MADE AT EACH MACHINE. MRS. DALE SPENDS ABOUT AN HOUR AND A HALF EACH DAY MAKING UP THE WORK ORDERS FOR THE GIRLS UNDER HER SUPERVISION AND ABOUT AN EQUAL AMOUNT OF TIME RELIEVING GIRLS ON THE MACHINES. THE REMAINDER OF HER TIME IS SPENT CHECKING THE MACHINES AND THE WORK OF THE GIRLS.

8. MRS. DALE'S EVIDENCE IS THAT SHE HAS OVERALL RESPONSIBILITY FOR THE TRAINING AND INSTRUCTION OF THE GIRLS IN THE CARRYING OUT OF THEIR DUTIES. SHE DOES SOME OF THE TRAINING HERSELF BUT MOST OF IT IS DONE BY LEAD HANDS, THERE BEING ONE ON EACH SHIFT. NEW GIRLS ARE

ASSIGNED TO WORK WITH MORE SENIOR AND EXPERIENCED GIRLS DURING THEIR TRAINING PERIOD. MRS. DALE ATTENDS MEETINGS, WHICH ARE HELD ON AN IRREGULAR BASIS, WITH THE SUPERVISORS. AT THESE MEETINGS, WORK PRODUCTION AND EMPLOYEE PERFORMANCE ARE DISCUSSED. MRS. DALE GIVES ORAL PROGRESS REPORTS ON THE CAPABILITIES AND JOB PERFORMANCE PARTICULARLY OF NEW GIRLS DURING THEIR PROBATIONARY PERIOD.

9. MRS. DALE DOES NOT HIRE EMPLOYEES AND HAS NO INDEPENDENT AUTHORITY TO DISCHARGE EMPLOYEES. SHE DOES NOT HAVE AUTHORITY TO GRANT TIME OFF EXCEPT WHEN AN EMPLOYEE IS OBVIOUSLY ILL, IN WHICH CASE MRS. DALE WOULD PERMIT THE EMPLOYEES TO GO HOME ON HER OWN INITIATIVE. ORDINARILY, HOWEVER, SHE WOULD CLEAR THE GRANTING OF ANY TIME OFF TO EMPLOYEES WITH MR. SMITH OR MR. KNOTT. MRS. DALE DISCIPLINES GIRLS FOR MINOR INFRACTIONS OF THE PLANT RULES SUCH AS TALKING ON THE JOB. WHEN SHE ENCOUNTERS ANY MORE SERIOUS DISCIPLINARY PROBLEMS, HOWEVER, SHE REFERS THE MATTER TO JOHN HUTCHISON, A FOREMAN.

10. THE BOARD HAS STATED THAT JOB TITLES ALONE ARE GENERALLY OF LITTLE ASSISTANCE IN DETERMINING WHAT A PERSON'S FUNCTIONS REALLY ARE (FALCONBRIDGE NICKEL MINES LIMITED CASE OLRB M.R. SEPTEMBER 1966 P. 379). THIS STATEMENT HOWEVER, IS NOT AS APPLICABLE TO PLANT BARGAINING UNITS AS TO OTHER TYPES OF BARGAINING UNITS. INDEED, THE FOLLOWING STATEMENT WITH RESPECT TO PLANT BARGAINING UNITS APPEAR IN THE ARTICLE BY G. W. REED, Q.C., TITLED WHITE-COLLAR BARGAINING UNITS UNDER THE ONTARIO LABOUR RELATIONS ACT (1969) PUBLISHED BY THE INDUSTRIAL RELATIONS CENTRE, QUEEN'S UNIVERSITY (RESEARCH SERIES: NO. 8) AT P. 35:

... THERE IS A DEGREE OF UNIFORMITY IN NOMENCLATURE IN RESPECT OF SUPERVISORY EMPLOYEES IN A PLANT WHICH HAS GAINED BROAD GENERAL ACCEPTANCE. IT IS ALMOST A RULE OF THUMB THAT A PERSON CLASSIFIED AS A FOREMAN IS EXCLUDED FROM A PLANT BARGAINING UNIT, THAT A PERSON ABOVE SUCH A RANK IS ALSO EXCLUDED AND ONE BELOW THAT RANK INCLUDED, AND THAT THERE IS A HEAVY ONUS ON THE PARTY SEEKING TO DEPART FROM THIS PATTERN.

11. THE STATUS OF FOREMEN WAS PREVIOUSLY DEALT WITH BY THE BOARD IN THE PRE-CON MURRAY LIMITED CASE OLRB M.R. AUGUST 1965 P. 328, WHICH READS IN PART:

... ASSUMING FOR PRESENT PURPOSES THAT WE ARE DEALING WITH A CRAFT BARGAINING UNIT THE NORMAL EXCLUSION IS NON-WORKING FOREMEN AND PERSONS ABOVE THAT RANK. PUT IN ANOTHER WAY, WORKING FOREMEN ARE USUALLY INCLUDED IN SUCH UNITS.

HOWEVER AS IN THE CASE OF THE EXCLUSION OF FOREMEN IN INDUSTRIAL UNITS THIS IS A POLICY BASED ON LONG EXPERIENCE THAT PERSONS SO DESIGNATED I.E. NON-WORKING FOREMEN IN CRAFT UNITS AND FOREMEN IN INDUSTRIAL UNITS NORMALLY EXERCISE MANAGERIAL FUNCTIONS WHILE WORKING FOREMEN IN CRAFT UNITS AND PERSONS BELOW THE RANK OF FOREMEN IN INDUSTRIAL UNITS EG. ASSISTANT FOREMEN, NORMALLY DO NOT EXERCISE SUCH FUNCTIONS. ON OCCASION HOWEVER THE BOARD HAS EXCLUDED ASSISTANT FOREMEN IN INDUSTRIAL UNITS AND SO-CALLED WORKING FOREMEN IN CRAFT UNITS BECAUSE IN THE PARTICULAR CASE THE BOARD HAS FOUND THAT THE INDIVIDUAL CONCERNED EXERCISED MANAGERIAL FUNCTIONS. IN ALL CASES THEREFORE THE QUESTION ALWAYS IS DOES A PERSON EXERCISE MANAGERIAL FUNCTIONS BECAUSE AS POINTED OUT BY COUNSEL FOR THE RESPONDENT THIS IS THE SOLE QUESTION BEFORE THE BOARD UNDER SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

12. IN A VERY RECENT DECISION IN THE WINDSOR UTILITIES COMMISSION CASE OLRB M.R. MAY 1971 P. 296, THE BOARD HAD OCCASION TO CONSIDER THE CRITERIA THAT SHOULD BE APPLIED IN DETERMINING WHETHER OR NOT PERSONS ALLEGED TO BE THE FIRST LEVEL OF MANAGEMENT, WHICH IN INDUSTRIAL OR PLANT UNITS IS GENERALLY FOREMEN, EXERCISE MANAGERIAL FUNCTIONS. THE DECISION READS IN PART:

5. WHERE PERSONS ARE ALLEGED TO BE MEMBERS OF MANAGEMENT AND HOLD POSITIONS WHICH ARE CLAIMED TO BE ON THE FIRST LEVEL OF MANAGEMENT, IT IS OFTEN VERY DIFFICULT TO ASCERTAIN ON WHICH SIDE OF THE MANAGERIAL LINE THEIR FUNCTIONS FALL. WHEN THE DISPUTED PERSONS HAVE NO REAL DISCRETIONARY AUTHORITY OR POWER TO MAKE MEANINGFUL INDEPENDENT DECISIONS AND ARE ALLEGED TO EXERCISE SUPERVISORY POWERS, THE BOARD MUST DETERMINE THE NATURE OF THE SUPERVISORY POWERS AND THE EXTENT TO WHICH SUCH SUPERVISORY POWERS ARE ACTUALLY EXERCISED.

IN THE WINDSOR UTILITIES COMMISSION CASE THE BOARD NOTED THAT IN LARGE COMPANIES THE RESPONSIBILITIES OF MANAGEMENT ARE SHARED BY A GREAT NUMBER OF PERSONS AND THAT FUNCTIONS SUCH AS HIRING AND FIRING MAY BE RESTRICTED TO THE HEAD OF A PERSONNEL DEPARTMENT WHO ACTS ON THE REPORTS AND RECOMMENDATIONS OF OTHERS. THE BOARD IN ITS DECISION FURTHER GOES ON TO SAY THAT WHERE A PERSON IS REQUIRED TO EXERCISE FUNCTIONS WHICH ARE OF A MANAGERIAL NATURE AND IS ALSO REQUIRED TO PERFORM THE TYPE OF WORK WHICH IS PERFORMED BY THE BARGAINING UNIT EMPLOYEES, THE BOARD

MUST DETERMINE WHETHER THE WORK IS MERELY INCIDENTAL TO HIS MANAGERIAL FUNCTIONS OR WHETHER THE FUNCTIONS WHICH ARE OF A MANAGERIAL NATURE ARE MERELY INCIDENTAL TO HIS BARGAINING UNIT WORK (SEE ALSO FALCONBRIDGE NICKEL MINES LIMITED CASE). THE BOARD MUST ALSO TAKE INTO ACCOUNT IN EACH SITUATION THE NATURE OF THE INDUSTRY OR BUSINESS AND THE EMPLOYER'S ORGANIZATIONAL SCHEME (SEE AJAX AND PICKERING GENERAL HOSPITAL OLRB M.R. FEBRUARY 1970 P. 1283).

13. THE FACT SITUATION IN THE CORPORATION OF THE CITY OF EASTVIEW CASE OLRB M.R. MARCH 1965 P. 639 IN MANY RESPECTS IS NOT DISSIMILAR FROM THAT BEFORE THE BOARD IN THE INSTANT CASE. IN THE EARLIER CASE, THE ISSUE WAS WHETHER OR NOT THREE PERSONS CLASSIFIED AS FOREMEN EXERCISED MANAGERIAL FUNCTIONS. THE THREE FOREMEN INVOLVED WERE PRIMARILY ENGAGED TO SUPERVISE THE MEN ON THE JOB AND WHILE THEY OCCASIONALLY ASSISTED EMPLOYEES THEY NORMALLY DID NOT WORK. IN THE SUPERVISION OF THE MEN THE FOREMEN ASSIGNED WORK, INSTRUCTED THEM IN THEIR WORK, REPORTED ON THEIR PROGRESS AND MIGHT RECOMMEND PROMOTIONS. THE BOARD FOUND THAT THE FOREMEN WERE ENGAGED PRIMARILY TO EXERCISE MANAGEMENT FUNCTIONS AND THAT THE FUNCTIONS PERFORMED BY THEM WHICH WERE NOT MANAGEMENT FUNCTIONS WERE ONLY INCIDENTAL TO THEIR PRIMARY DUTIES. THE BOARD IN THAT CASE FOUND THAT THE FACT THAT THE FOREMEN DID NOT PERFORM SUCH MANAGEMENT FUNCTIONS AS HIRING AND FIRING DID NOT DETRACT FROM THE MANAGEMENT FUNCTIONS WHICH WERE EXERCISED BY THEM.

14. IN THE ABOVE CITED CASES THE REFERENCE IS TO FOREMEN. WHERE THERE ARE FORELADIES AS WELL AS FOREMEN IN A PLANT, IN THE BOARD'S EXPERIENCE THERE HAS BEEN GENERAL ACCEPTANCE THAT THE FORELADIES ARE ALSO EXCLUDED FROM THE BARGAINING UNIT AS THE FIRST OR LOWEST LEVEL OF MANAGEMENT. IN THIS CIRCUMSTANCE, THE ONUS IS ON THE PARTY, IN THIS CASE THE RESPONDENT, ALLEGING THAT THE TWO FORELADIES IN QUESTION SHOULD BE INCLUDED IN THE BARGAINING UNIT TO SATISFY THE BOARD THAT THE SAID FORELADIES DO NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

15. IN THE INSTANT CASE, MRS. DALE AND MRS. JOHNSTON DO NOT HAVE THE AUTHORITY TO HIRE AND DISCHARGE EMPLOYEES ALTHOUGH THEY DO HAVE CERTAIN LIMITED AUTHORITY TO DISCIPLINE EMPLOYEES. AS WAS STATED IN AN EARLIER CITED DECISION, THE ABSENCE OF THE AUTHORITY TO HIRE AND DISCHARGE EMPLOYEES, IN ITSELF, DOES NOT MEAN THAT SUCH PERSONS DO NOT EXERCISE MANAGERIAL FUNCTIONS. THE TWO FORELADIES, HOWEVER, ARE RESPONSIBLE FOR THE ASSIGNMENT OF WORK AND FOR SEEING THAT THE WORK OF THE EMPLOYEES IS PERFORMED SATISFACTORILY. IN ADDITION, MRS. DALE AND MRS. JOHNSTON ARE RESPONSIBLE FOR THE TRAINING OF THE FEMALE EMPLOYEES ALTHOUGH THE LEAD HANDS AND EXPERIENCED OPERATORS DO MOST OF THE ACTUAL TRAINING. THE TWO FORELADIES ATTEND MEETINGS WITH OTHER SUPERVISORS AT WHICH PRODUCTION AND WORK PERFORMANCE ARE DISCUSSED. SIGNIFICANTLY,

THEY ARE CALLED UPON TO ASSESS THE CAPABILITIES AND JOB PERFORMANCE PARTICULARLY OF NEW EMPLOYEES DURING THEIR PROBATIONARY PERIOD. IN OTHER WORDS, CERTAINLY IN THE CASE OF NEW EMPLOYEES MRS. DALE AND MRS. JOHNSTON CAN MATERIALLY AFFECT THEIR EMPLOYMENT RELATIONSHIP WITH THE RESPONDENT. FINALLY AND OF CONSIDERABLE IMPORTANCE IS THE FACT THAT THE FORELADIES SPEND A MAJORITY OF THEIR TIME SUPERVISING THE WORK OF THE FEMALE EMPLOYEES. THEY SPEND ONLY A RELATIVELY SMALL PROPORTION OF THEIR TIME DOING BARGAINING UNIT WORK ON A RELIEF BASIS. IT IS FAIR TO SAY THAT A MAJORITY OF THEIR TIME IS SPENT PERFORMING FUNCTIONS THAT ARE MANAGERIAL IN NATURE AND THAT THE BARGAINING UNIT WORK WHICH THEY DO IS INCIDENTAL TO THEIR SUPERVISORY DUTIES. IT WOULD APPEAR FROM THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER THAT THE FORELADIES HAVE MORE RESTRICTED AUTHORITY THAN THE FOREMEN WHOM THE PARTIES AGREE ARE PART OF MANAGEMENT. NOTWITHSTANDING THE LESSER AUTHORITY EXERCISED BY THE FORELADIES, BASED ON THE EVIDENCE BEFORE US, AND APPLYING THE CRITERIA SET OUT BY THE BOARD IN THE CASES CITED ABOVE, WE ARE NOT PERSUADED THAT THEY DO NOT HAVE THE PREREQUISITE AUTHORITY TO BE CLASSIFIED AS MEMBERS OF MANAGEMENT. THE BOARD THEREFORE FINDS THAT MRS. GLADYS DALE AND MRS. ANNE JOHNSTON EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

16. WE WOULD MENTION HERE THAT THE RESPONDENT VOLUNTARILY RECOGNIZED THE INTERVENER AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES WHICH INCLUDES THE FORELADIES. THE BOARD DOES NOT KNOW ON WHAT BASIS THE FORELADIES WERE INCLUDED IN THE BARGAINING UNIT. ACCORDINGLY, LITTLE, IF ANY, WEIGHT CAN BE ATTACHED TO THIS FACT. THE BOARD ARRIVED AT ITS DETERMINATION UPON A CONSIDERATION OF THE EVIDENCE BEFORE IT AS TO THE DUTIES AND RESPONSIBILITIES OF THE FORELADIES AS CONTAINED IN THE REPORT OF THE EXAMINER.

17. A CRUCIAL ISSUE CONFRONTING THE BOARD IN THIS APPLICATION IS THE STATUS OF THE INTERVENER, FEDERAL PACKAGING EMPLOYEES ASSOCIATION. THE RESPONDENT AND THE INTERVENER IN THEIR RESPECTIVE REPLIES ADVISED THE BOARD THAT IN 1964 THE RESPONDENT AHD VOLUNTARILY RECOGNIZED THE INTERVENER AS THE BARGAINING AGENT FOR A UNIT OF ITS EMPLOYEES AND THAT THEY HAD BEEN PARTIES TO A CONTINUING SERIES OF COLLECTIVE AGREEMENTS FROM THAT TIME TO THE PRESENT. THE INTERVENER FILED A COPY OF ITS CONSTITUTION AND A COPY OF WHAT IS PURPORTED TO BE THE CURRENT COLLECTIVE AGREEMENT IN EFFECT BETWEEN IT AND THE RESPONDENT. THE SAID AGREEMENT WHICH IS DATED FEBRUARY 8, 1970 REMAINS IN EFFECT FROM MARCH 1, 1970 TO FEBRUARY 29, 1972 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE. IN VIEW OF THIS AGREEMENT, THE RESPONDENT AND INTERVENER SUBMIT THAT THE INSTANT APPLICATION IS UNTIMELY AND THEREFORE SHOULD BE DISMISSED.

18. BY LETTER DATED MARCH 9, 1971, INTER ALIA, COUNSEL FOR THE

APPLICANT ALLEGED THAT THE INTERVENER ASSOCIATION IS NOT A TRADE UNION WITHIN THE MEANING OF THE LABOUR RELATIONS ACT. COUNSEL IN HIS LETTER PROVIDED CERTAIN PARTICULARS IN SUPPORT OF HIS ALLEGATION WHICH ARE SET OUT BELOW:

FROM TIME TO TIME IN YEARS PAST, THE FEDERAL PACKAGING EMPLOYEES' ASSOCIATION HAS HAD ELECTIONS OF OFFICERS. ON THESE OCCASIONS NOTICES OF SUCH ELECTIONS ON THE RESPONDENT'S LETTERHEAD HAVE BEEN POSTED ON THE RESPONDENT'S BULLETIN BOARDS. IN ONE ELECTION DURING THE SUMMER OF 1969, THE BALLOT WAS CONDUCTED IN THE RESPONDENT'S CAFETERIA AND THE BALLOTS WERE TABULATED IN THE OFFICE OF THE PRODUCTION SUPERINTENDENT. PRESENT MANAGER, MR. BARRETT, THE PRODUCTION SUPERINTENDENT, MR. KNOTT, A FORELADY, MRS. JOHNSTON, AND OTHERS. DURING THIS SAME ELECTION ONE CANDIDATE FOR OFFICE WAS SPOKEN TO BY BOTH THE PRODUCTION SUPERINTENDENT AND THE PLANT MANAGER CONCERNING HIS CANDIDACY AND ATTEMPTS WERE MADE TO PERSUADE HIM NOT TO SEEK OFFICE. THE RESULTS OF THE BALLOTING IN THAT CASE WERE POSTED ON COMPANY LETTERHEAD ON THE RESPONDENT'S BULLETIN BOARD FOLLOWING THE TABULATION.

SINCE AT LEAST 1970, THE ASSOCIATION'S FINANCIAL STATEMENTS, COMPILED FROM BANK STATEMENTS AND SUPPORTING VOUCHERS, HAVE BEEN PREPARED BY PERSONNEL IN THE RESPONDENT'S PAYROLL DEPARTMENT WITHOUT CHARGE TO THE ASSOCIATION. THE ASSOCIATION'S FINANCIAL STATEMENTS ARE MAILED BY THE BANK DIRECTLY TO THE RESPONDENT RATHER THAN TO AN OFFICER OF THE INTERVENER.

19. COUNSEL FOR THE RESPONDENT BY TELEGRAM DATED MARCH 11, 1971 REQUESTED FURTHER PARTICULARS OF THE APPLICANT'S ALLEGATION. BY LETTER DATED MARCH 12, 1971 COUNSEL FOR THE APPLICANT PROVIDED CERTAIN ADDITIONAL PARTICULARS IN RESPONSE TO THE SAID REQUEST. IT IS NOT NECESSARY TO OUTLINE THE DETAILS OF THE FURTHER PARTICULARS FOR PURPOSES OF THIS DECISION OTHER THAN TO SAY THAT NONE OF THE PARTICULARS RELATE TO EVENTS PRIOR TO 1966.

20. AT THE SECOND HEARING ON JUNE 2, 1971, AFTER ENTERTAINING THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE EXAMINER'S REPORT, THE BOARD CALLED UPON COUNSEL FOR THE APPLICANT TO ADDUCE EVIDENCE IN SUPPORT OF HIS CHARGES THAT THE INTERVENER ASSOCIATION WAS NOT A TRADE UNION WITHIN THE MEANING OF THE ACT. COUNSEL ADVISED THE BOARD THAT HE PROPOSED TO CALL A WITNESS FOR THE PURPOSE OF ADDUCING EVIDENCE CONCERNING THE FORMATION OF THE ASSOCIATION IN 1964 AND IN PARTICULAR FOR THE PURPOSE OF ESTABLISHING THAT THE INTERVENER

HAD NOT ADOPTED A CONSTITUTION. BOTH COUNSEL FOR THE RESPONDENT AND COUNSEL FOR THE INTERVENER SUBMITTED THAT COUNSEL FOR THE APPLICANT SHOULD NOT BE PERMITTED TO ADDUCE ANY EVIDENCE RELATING TO THE ORIGINAL FORMATION OF THE INTERVENER AS HE HAD NOT ALLEGED THAT THERE WERE ANY IRREGULARITIES IN THE FORMATION OF THE ASSOCIATION NOR HAD HE PROVIDED ANY PARTICULARS RELATING THERETO. COUNSEL FOR THE APPLICANT ARGUED THAT SINCE HE HAD CHALLENGED THE STATUS OF THE INTERVENER HE WAS ENTITLED TO CALL ANY EVIDENCE RELEVANT TO THAT ISSUE. COUNSEL FOR THE APPLICANT ADVISED THE BOARD, HOWEVER, THAT HE WAS PREPARED TO ACCEDE TO AN ADJOURNMENT TO ALLOW THE INTERVENER TIME TO PREPARE TO MEET HIS SPECIFIC ALLEGATION THAT THE INTERVENER HAD NOT ADOPTED A CONSTITUTION.

21. WE WOULD RECORD AT THIS POINT THAT AT THE COMMENCEMENT OF THE HEARING ON JUNE 2, 1971, THE CHAIRMAN ADVISED THE PARTIES THAT DUE TO OTHER COMMITMENTS THE BOARD WOULD HAVE TO ADJOURN THE HEARING AT NOON ON THAT DAY. BY THE TIME THE PARTIES HAD MADE THEIR REPRESENTATIONS WITH RESPECT TO THE REPORT OF THE EXAMINER AND THE BOARD HAD ENTERTAINED THE REPRESENTATIONS OF THE PARTIES ON THE ISSUE AS TO WHETHER OR NOT COUNSEL FOR THE APPLICANT SHOULD BE PERMITTED TO ADDUCE EVIDENCE RELATING TO THE FORMATION OF THE INTERVENER, THE NOON TIME LIMIT SET BY THE BOARD FOR THE ADJOURNMENT OF THE CASE HAD BEEN REACHED. ACCORDINGLY, ANY EVIDENCE RELATING TO THE ALLEGATIONS OF THE APPLICANT WOULD HAVE TO BE HEARD ON A FUTURE DATE FIXED BY THE REGISTRAR FOR A CONTINUATION OF THE HEARING OF THE CASE.

22. THE CHARGES OF COUNSEL FOR THE APPLICANT AS CONTAINED IN HIS LETTERS OF MARCH 9TH AND 12TH ALL RELATE TO THE CONDUCT OF THE RESPONDENT IN THE YEARS FROM 1966 TO THE PRESENT. AT NO TIME PRIOR TO THE HEARING ON JUNE 2ND DID COUNSEL FOR THE APPLICANT INDICATE THAT HE PROPOSED TO CALL ANY EVIDENCE RELATING TO THE FORMATION OF THE INTERVENER IN 1964 AND IN PARTICULAR HE PROVIDED NO ADVANCE NOTICE THAT HE WAS CHALLENGING THE CONSTITUTION, A COPY OF WHICH HAD BEEN FILED BY THE INTERVENER.

23. THE GENERAL PRINCIPLES WHICH THE BOARD FOLLOWS IN DEALING WITH THE FILING OF CHARGES AND THE PROVIDING OF PARTICULARS ARE SET OUT IN THE FLECK MANUFACTURING LIMITED CASE 62 CLLC 1046:

IT IS INCUMBENT ON ALL PARTIES TO PROCEEDINGS BEFORE THE BOARD TO INVESTIGATE MATTERS RELEVANT TO THEIR CASES AS EARLY AS POSSIBLE AND IF THEY INTEND TO MAKE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT AGAINST ANOTHER PARTY TO DO SO PROMPTLY. THE OBJECT OF THIS REQUIREMENT, WHICH FINDS EXPRESSION IN SECTION 48 [NOW SECTION 47] OF THE RULES, IS OBVIOUSLY TO EXPEDITE AND

FACILITATE THE HEARING AND PROCESSING OF APPLICATIONS UNDER THE ACT AND TO AVOID PREJUDICE, DELAY OR EMBARRASSMENT TO THE PARTIES INVOLVED. DELAYED AND LAST-MINUTE ALLEGATIONS, WHICH LEAD TO ADJOURNMENTS OR CAUSE PREJUDICE, EMBARRASSMENT OR UNNECESSARY EXPENSE TO THE OTHER PARTIES, AND WHICH WITH REASONABLE DILIGENCE COULD HAVE BEEN MADE AT A MORE TIMELY STAGE OF THE PROCEEDINGS WILL NOT BE ENTERTAINED EXCEPT FOR GOOD AND SUFFICIENT CAUSE.

24. HAVING REGARD TO THE ABOVE PRINCIPLES AND SUBSEQUENT DECISIONS IN WHICH THESE PRINCIPLES HAVE BEEN APPLIED, IF THE BOARD HAD BEEN IN A POSITION TO HEAR EVIDENCE IN SUPPORT OF THE CHARGES OF THE APPLICANT WITH RESPECT TO THE STATUS OF THE INTERVENER ON JUNE 2ND, THE BOARD WOULD NOT HAVE HESITATED IN CONFINING COUNSEL FOR THE APPLICANT TO THE CALLING OF EVIDENCE RELATING TO THE PARTICULARS OF THE ALLEGATION WHICH HE HAD ALREADY FILED AND WOULD NOT HAVE ALLOWED HIM TO CALL EVIDENCE WITH RESPECT TO THE ADOPTION OF THE CONSTITUTION OF THE INTERVENER (SEE SEAWAY APPAREL LIMITED OLRB M.R. MAY 1967 P. 145; NATIONAL STARCH & CHEMICAL Co. (CANADA) LTD. OLRB M.R. SEPTEMBER 1968 P. 597; AMERICAN OPTICAL COMPANY CANADA LIMITED OLRB M.R. MAY 1968 P. 602; BURLINGTON HOTEL COMPANY LIMITED OLRB M.R. NOVEMBER 1969 P. 970).

25. AS HAS BEEN STATED, IT WAS NECESSARY FOR THE BOARD TO ADJOURN THE HEARING ON JUNE 2ND, BEFORE ANY EVIDENCE RELATING TO THE APPLICANT'S CHARGES COULD BE HEARD. THE ADJOURNMENT CREATES A NEW SET OF CIRCUMSTANCES WHICH REQUIRE THE BOARD TO TAKE INTO ACCOUNT FACTORS WHICH IT WAS NOT NECESSARY FOR THE BOARD TO CONSIDER IN THE ABOVE CITED CASES. THE BOARD, HOWEVER, HAS DEALT WITH THE ISSUE OF THE LATE FILING OF CHARGES IN CASES WHERE THE FACT SITUATIONS WERE MORE AKIN TO THOSE BEFORE US IN THE INSTANT CASE. IN THE MUIRHEAD INSTRUMENTS LIMITED CASE OLRB M.R. OCTOBER 1966 P. 449, A GROUP OF EMPLOYEES FILED A DOCUMENT IN OPPOSITION TO AN APPLICATION FOR CERTIFICATION. THE BOARD AT THE INITIAL HEARING DID NOT INQUIRE INTO THE DOCUMENT AND ADJOURNED THE HEARING OF THE APPLICATION FOR THE PURPOSE OF APPOINTING AN EXAMINER TO INQUIRE INTO THE DUTIES AND RESPONSIBILITIES OF CERTAIN PERSONS WHO HAD BEEN CHALLENGED AS BEING MANAGERIAL PERSONNEL. THE APPLICANT UNION REQUESTED LEAVE OF THE BOARD TO FILE CHARGES RELATING TO THE PETITION ALTHOUGH IT ACKNOWLEDGED THAT THE APPLICANT HAD INFORMATION CONCERNING THE CHARGES APPROXIMATELY A WEEK PRIOR TO THE HEARING. NO REASON, MOREOVER, WAS GIVEN FOR THE DELAY IN FILING THE CHARGES. THE APPLICANT UNION ARGUED THAT SINCE THE MATTER WAS TO BE ADJOURNED AND A FURTHER HEARING WAS NECESSITATED, TO INQUIRE INTO THE PETITION FILED IN OPPOSITION TO THE APPLICATION, THROUGH NO FAULT OF THE APPLICANT, NO ONE WOULD SUFFER PREJUDICE OR ADDITIONAL EXPENSE AND NO FURTHER DELAY WOULD BE OCCASIONED IF THE APPLICANT WERE PERMITTED TO FILE CHARGES. THE BOARD HELD THAT THE

REASONS SET OUT IN THE FLECK MANUFACTURING LIMITED CASE FOR REFUSING TO PERMIT THE LATE FILING OF ALLEGATIONS OF IMPROPER CONDUCT WERE NOT APPLICABLE IN THE MUIRHEAD INSTRUMENTS LIMITED CASE. THE BOARD FOUND RATHER THAT SINCE IT WAS FACED WITH THE NECESSITY OF AN ADJOURNMENT WHICH WAS NOT AT THE REQUEST OR THROUGH THE MANOEUVRING OF THE PARTY DESIRING TO MAKE CHARGES, THE BOARD COULD NOT FIND ANY REAL REASON FOR REFUSING PERMISSION TO THE APPLICANT TO MAKE ITS CHARGES. THE BOARD IN THAT CASE ACCORDINGLY PERMITTED THE APPLICANT TO FILE ITS CHARGES RELATING TO THE PETITION.

26. THE FACTS OF THE BOARD OF EDUCATION FOR THE CITY OF TORONTO CASE OLRB M.R. NOVEMBER 1969 P. 973 ALSO BEAR A RESEMBLANCE IN SOME RESPECTS TO THOSE BEFORE THE BOARD IN THE INSTANT CASE. IN THAT CASE CHARGES WERE FILED LATE ON A FRIDAY AFTERNOON AND THE HEARING TOOK PLACE ON THE FOLLOWING MONDAY MORNING. AT THE HEARING COUNSEL FOR THE APPLICANT TRADE UNION OBJECTED TO THE LATE FILING OF CHARGES PARTICULARLY SO BECAUSE THE GROUP OF EMPLOYEES HAD BEEN POSSESSED OF THE KNOWLEDGE WITH RESPECT TO THESE CHARGES FOR SOME TIME. THE APPLICANT MOVED THAT THE BOARD NOT HEAR EVIDENCE RESPECTING THE CHARGES. DURING THE HEARING IT BECAME APPARENT TO THE BOARD THAT THE MATTER WOULD INVOLVE THE TAKING OF EVIDENCE AND THAT THERE WAS A POSSIBILITY THAT AN EXAMINER MIGHT BE APPOINTED. THE BOARD HAD HEARD ARGUMENT FROM COUNSEL WITH RESPECT TO THE BARGAINING UNIT AND COUNSEL WAS THEN PREPARED TO ADDUCE EVIDENCE WITH RESPECT TO CERTAIN FACTS THAT REMAINED IN DISPUTE. IT APPEARED THAT THE ADDUCING OF EVIDENCE AND ARGUMENT WOULD OCCUPY THE BOARD FOR AT LEAST ONE FULL DAY AND PERHAPS TWO, AND ACCORDINGLY THE CASE WAS ADJOURNED TO A DATE TO BE FIXED BY THE REGISTRAR IN ORDER THAT THE EVIDENCE COULD BE ADDUCED AND ARGUMENT SUBMITTED. THE APPLICANT DID NOT REQUEST THE ADJOURNMENT AND INDICATED THAT IT WAS PREPARED TO PROCEED WITH THE HEARING. THE BOARD IN ITS DECISION STATED THAT WHILE IT DID NOT CONDONE THE LATE FILING OF CHARGES SUCH AS WERE BEFORE IT, IN VIEW OF THE ADJOURNMENT AND FOR THE REASONS SET OUT IN THE MUIRHEAD INSTRUMENTS LIMITED CASE THE BOARD DENIED THE MOTION OF THE APPLICANT AND ALLOWED THE CHARGES TO BE FILED.

27. WHILE, AS WE HAVE ALREADY STATED, THERE ARE CERTAIN SIMILARITIES BETWEEN THE FACT SITUATIONS IN THE MUIRHEAD INSTRUMENTS LIMITED CASE AND THE BOARD OF EDUCATION FOR THE CITY OF TORONTO CASE AND THE INSTANT CASE, THERE ARE SOME MARKED DIFFERENCES AS WELL. IN THE FIRST CITED CASE, THE APPLICANT ACKNOWLEDGED THAT IT HAD INFORMATION CONCERNING ITS CHARGES APPROXIMATELY ONE WEEK PRIOR TO THE HEARING. IN THE LATTER CITED CASE, THE CHARGES WERE ACTUALLY FILED BY A GROUP OF EMPLOYEES PRIOR TO THE HEARING. IN THE INSTANT CASE, HOWEVER, IT WAS ONLY AT THE SECOND HEARING NEARLY THREE MONTHS AFTER THE CHARGES WERE INITIALLY FILED THAT COUNSEL FOR THE APPLICANT SOUGHT TO ADDUCE EVIDENCE AS TO AN ALLEGED DEFECT IN THE FORMATION OF THE INTERVENER, I.E.

THAT THE INTERVENER HAD NOT PROPERLY ADOPTED A CONSTITUTION. MOREOVER, IT WAS NOT ALLEGED THAT THE INFORMATION UPON WHICH THIS ALLEGATION WAS BASED HAD ONLY RECENTLY COME TO THE ATTENTION OF THE APPLICANT. IN ALL THESE CIRCUMSTANCES, WE MUST ASSUME THAT THE APPLICANT HAD KNOWLEDGE OF THE ALLEGED DEFECT IN THE FORMATION OF THE INTERVENER OR BY REASONABLY DILIGENT INQUIRIES COULD HAVE SO ACQUIRED THIS KNOWLEDGE NOT ONLY PRIOR TO THE HEARING ON JUNE 2ND BUT EVEN PRIOR TO THE FIRST HEARING ON APRIL 2ND.

28. A MORE IMPORTANT DIFFERENCE BETWEEN THE ABOVE CITED CASES AND THE INSTANT CASE IS THAT HERE THE APPLICANT IS NOT SEEKING MERELY TO FILE ADDITIONAL PARTICULARS OF ITS CHARGE THAT THE INTERVENER IS NOT A TRADE UNION. THE APPLICANT, IN EFFECT, IS SEEKING TO SUPPORT ITS CHARGE ON ENTIRELY DIFFERENT GROUNDS. THE PARTICULARS OF ITS CHARGES FILED ON MARCH 9TH AND 12TH RELATE ENTIRELY TO ACTIVITIES ALLEGED TO HAVE BEEN ENGAGED IN BY MEMBERS OF MANAGEMENT OF THE RESPONDENT IN THE AFFAIRS OF THE INTERVENER DURING A PERIOD FROM 1966 TO THE PRESENT. THE APPLICANT IS NOW ATTEMPTING TO SUPPORT ITS CHARGE THAT THE INTERVENER IS NOT A TRADE UNION ON AN ALTERNATIVE AND ENTIRELY DIFFERENT BASIS, I.E. THAT THERE WAS A DEFECT IN THE FORMATION OF THE INTERVENER IN 1964 IN THAT THE INTERVENER DID NOT ADOPT A CONSTITUTION.

29. IN LIGHT OF ALL THE CIRCUMSTANCES AS OUTLINED ABOVE, THE BOARD IS OF THE OPINION THAT THE APPLICANT SHOULD NOT BE PERMITTED AT THIS TIME TO AMEND ITS CHARGES WITH RESPECT TO THE STATUS OF THE INTERVENER. IN ARRIVING AT THIS DECISION, THE BOARD HAS TAKEN INTO ACCOUNT THE LENGTH OF TIME THAT HAS ELAPSED SINCE THE APPLICANT ORIGINALLY FILED ITS CHARGES WITHOUT ANY EXPLANATION AS TO THE REASON WHY THE ADDITIONAL PARTICULARS COULD NOT HAVE BEEN FILED AT AN EARLIER STAGE IN THE PROCEEDINGS. THE BOARD HAS GIVEN WEIGHT TO THE FACT THAT THE APPLICANT IS NOW SEEKING TO CHALLENGE THE STATUS OF THE INTERVENER ON ENTIRELY NEW GROUNDS. THE APPLICANT ACCORDINGLY WILL BE CONFINED TO ADDUCING EVIDENCE RELATING TO THE PARTICULARS CONTAINED IN THE LETTERS OF COUNSEL FOR THE APPLICANT DATED MARCH 9TH AND 12TH, 1971.

30. THE BOARD DIRECTS THAT THE REGISTRAR LIST THIS MATTER FOR CONTINUATION OF HEARING ON ALL OUTSTANDING ISSUES.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: JULY 30, 1971.

1. I AM IN AGREEMENT WITH THE FINDING OF THE MAJORITY THAT THE APPLICANT SHOULD NOT BE PERMITTED AT THIS TIME TO AMEND ITS CHARGES WITH RESPECT TO THE STATUS OF THE INTERVENER.

2. I DISSENT, HOWEVER, FROM THE DECISION OF THE MAJORITY THAT GLADYS DALE AND ANNE (N.E.) JOHNSTON EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. THE REASONS IN SUPPORT OF MY DISSENT WILL FOLLOW.

447-71-R: SERVICE EMPLOYEES UNION, LOCAL 204, AFFILIATED WITH THE S.E.I.U. A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. NATION-WIDE INTERIOR MAINTENANCE CO. LTD. (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: M. LEVINSON AND J. H. NICHOLLS FOR THE APPLICANT, W. G. PHELPS AND G. SYLVIA FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 9, 1971.

1. THIS IS AN APPLICATION FOR CERTIFICATION. AT THE HEARING IN THIS MATTER, THE PARTIES AGREED THAT THE EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO AND MISSISSAUGA FALL INTO FIVE SEPARATE BARGAINING UNITS. THE PARTIES FURTHER AGREED THAT THIS BOARD HAD JURISDICTION WITH RESPECT TO TWO OF THESE BARGAINING UNITS. IT WAS THE RESPONDENT'S POSITION, HOWEVER, THAT THE RESPONDENT HAD ENTERED INTO CONTRACTS TO PERFORM JANITORIAL SERVICES WITH FEDERAL DEPARTMENTS WITH RESPECT TO THREE OF THE BARGAINING UNITS AND ACCORDINGLY THE THREE LOCATIONS WHERE SUCH JANITORIAL SERVICES WERE BEING PERFORMED, I.E. TORONTO INTERNATIONAL AIRPORT, MCKENZIE BUILDING AND THE DON MILLS POST OFFICE, FALL WITHIN FEDERAL JURISDICTION AND ACCORDINGLY ARE NOT WITHIN THE JURISDICTION OF THIS BOARD. THE BOARD DIRECTED THAT THE PARTIES SUBMIT WRITTEN ARGUMENT WITH RESPECT TO THIS ISSUE CONCERNING THE THREE BARGAINING UNITS IN QUESTION. HOWEVER, THE PARTIES AGREED THAT THE BOARD WAS ENTITLED TO MAKE ITS DECISION WITH RESPECT TO THE OTHER TWO BARGAINING UNITS WHICH ARE UNDER THE JURISDICTION OF THIS BOARD.

2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

3. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT THE CADILLAC BUILDING, 101 BLOOR STREET WEST, METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING (HEREINAFTER REFERRED TO AS BARGAINING UNIT #1).

4. OF THE 9 PERSONS WHO WERE INCLUDED ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT FOR BARGAINING UNIT #1, NONE WERE CLAIMED BY THE APPLICANT AS MEMBERS. THE BOARD IS ACCORDINGLY SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT #1, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 28, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.
5. THE APPLICATION IS DISMISSED WITH RESPECT TO BARGAINING UNIT #1.
6. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT THE STEPHEN LEACOCK SCHOOL IN THE BOROUGH OF SCARBOROUGH, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING (HEREINAFTER REFERRED TO AS BARGAINING UNIT #2).
7. OF THE 10 PERSONS WHOSE NAMES APPEAR ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT WITH RESPECT TO BARGAINING UNIT #2, ALL WERE CLAIMED BY THE APPLICANT AS MEMBERS. THE BOARD IS ACCORDINGLY SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT #2, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 28, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.
8. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO BARGAINING UNIT #2.
9. THE BOARD RESERVES ITS DECISION WITH RESPECT TO THE OTHER ISSUES IN THIS MATTER UNTIL SUCH TIME AS THE WRITTEN SUBMISSIONS OF THE PARTIES HAVE BEEN RECEIVED BY THE BOARD IN ACCORDANCE WITH ITS DIRECTION.

CASE LISTINGS JULY 1971

	PAGE
1. CERTIFICATION	
(A) BARGAINING AGENTS CERTIFIED	153
(B) APPLICATIONS DISMISSED	166
(C) APPLICATIONS WITHDRAWN	169
2. APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS	170
3. APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL	170
4. APPLICATION FOR DECLARATION THAT LOCK-OUT UNLAWFUL	171
5. APPLICATIONS FOR CONSENT TO PROSECUTE	171
6. COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE)	172
7. APPLICATIONS UNDER SECTION 35(A)	173
8. JURISDICTIONAL DISPUTES	173
9. APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2)	174
10. REFERENCE TO BOARD PURSUANT TO SECTION 79A	174
11. APPLICATIONS FOR RECONSIDERATIONS OF BOARD'S DECISION	174

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING JULY 1971

BARGAINING AGENTS CERTIFIED DURING JULY

NO VOTE CONDUCTED

18860-70-R: NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES AND TECHNICIANS AFL-CIO-CLC (APPLICANT) V. THE ONTARIO EDUCATIONAL COMMUNICATIONS AUTHORITY (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING IN AND/OR OUT OF METROPOLITAN TORONTO SAVE AND EXCEPT SUPERVISORS AND MANAGERS AND PERSONS ABOVE THE RANK OF SUPERVISOR AND MANAGER, ASSOCIATE SUPERVISORS, OFFICE AND SALES STAFF, ANNOUNCERS, CARPENTERS, CHIEF ACCOUNTANT, CHIEF ENGINEER; CLERKS GENERAL II INCLUDING DUPLICATING MACHINE OPERATORS AND SUPPLY CLERKS; CLERKS GENERAL III INCLUDING BOOKKEEPING MACHINE OPERATORS, PUBLICATIONS CLERKS, SCRIPT CLERKS, OPERATIONS CLERKS, ACCOUNTS CLERKS, DISTRIBUTION CLERKS, PUBLICATIONS OFFICERS, TRAVEL CLERKS AND PERSONNEL CLERKS; CLERKS GENERAL IV INCLUDING PAYROLL CLERKS, CLERK ASSISTANTS, BUDGET CLERKS, AND PERSONNEL CLERKS; CLERICAL STENOGRAPHERS III INCLUDING SECRETARIES 3; CLERICAL TYPISTS 2 INCLUDING UNIT TYPISTS AND TYPISTS; CORPORATE OFFICERS; CURATOR OF MEDIA RESOURCE CENTRE; DESIGN CO-ORDINATORS; DEVELOPMENT OFFICERS; DUPLICATING MACHINE OPERATORS (OPERATIONS AND ENGINEERING); EDUCATION OFFICERS I, II, III, AND IV INCLUDING EDUCATIONAL SUPERVISORS, EDUCATIONAL PRODUCERS, ASSISTANT SUPERINTENDENTS AND PROGRAM ORGANIZERS; EDUCATIONAL SUPERINTENDENTS II INCLUDING PROGRAM ORGANIZERS; ENGINEERS IV INCLUDING SUPERVISORS OF ENGINEERING SERVICES; EXECUTIVE PRODUCERS INCLUDING PRODUCERS; FILM DIRECTORS INCLUDING DIRECTORS OF PRODUCTION; INFORMATION OFFICERS I, II, AND III; LIBRARY TECHNICIANS II INCLUDING LIBRARIANS; MANAGEMENT SUPERVISORS I INCLUDING COPYRIGHT CLEARANCE ASSISTANTS, ASSISTANTS TO PROGRAM CO-ORDINATORS, ASSISTANT UNIT MANAGERS, AND ADMINISTRATIVE ASSISTANTS; MANAGEMENT SUPERVISORS II INCLUDING FILM CO-ORDINATORS ADMINISTRATIVE ASSISTANTS, PRODUCTION CO-ORDINATORS, SENIOR UNIT MANAGERS, UNIT MANAGERS, SCHEDULING SUPERVISOR, COPYRIGHT CLEARANCE ASSISTANTS, BROADCAST TRAFFIC SUPERVISOR, SUPERVISORS OF TECHNICAL OPERATIONS, AND OPERATIONS CO-ORDINATORS; MANAGEMENT SUPERVISORS III INCLUDING SCRIPT CO-ORDINATORS, PRESENTATION CO-ORDINATORS, TALENT CO-ORDINATORS AND PROGRAM PROCUREMENT OFFICERS; MANAGEMENT SUPERVISORS IV INCLUDING SUPERVISORS OF PRODUCTION SERVICES; OFFSET OPERATORS II; PRODUCERS; PROGRAM ORGANIZERS I; PURCHASING OFFICERS III INCLUDING PURCHASING ACCOMMODATIONS OFFICER;

RESEARCH ASSISTANTS VII INCLUDING ADMINISTRATIVE ASSISTANTS; RESEARCH OFFICERS; SECRETARIES III, IV, AND V; SENIOR EXECUTIVE PRODUCERS INCLUDING EXECUTIVE PRODUCERS; SENIOR SECRETARIES II; TYPISTS II INCLUDING CHANNEL 19 RECEPTIONISTS, CHANNEL 19 RECEPTIONIST/TYPISTS, UNIT TYPISTS AND TYPIST/RECEPTIONISTS; AND TYPISTS III INCLUDING UNIT TYPISTS." (71 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES). (FOR THE PURPOSES OF CLARITY WE DECLARED THAT PROGRAM RESEARCH ASSISTANTS ARE INCLUDED IN THE BARGAINING UNIT).

320-71-R: LOCAL 12-L, LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION (APPLICANT) V. WALTERS LITHOGRAPHING COMPANY LIMITED, YASHAR LITHOGRAPHING LIMITED, ONTARIO LITHOGRAPHING COMPANY LIMITED, KENNEDY GRAPHIC PLATES LIMITED, BURTCHE LITHOGRAPHIC LIMITED AND TORONTO LITHOGRAPHING COMPANY LIMITED (RESPONDENTS).

UNIT: "ALL LITHOGRAPHERS, THEIR APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENTS AT METROPOLITAN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (61 EMPLOYEES IN THE UNIT). (FOR PURPOSES OF CLARITY THE BOARD DECLARED THAT ALL EMPLOYEES OF THE RESPONDENTS ENGAGED IN BOTH OFFSET LITHOGRAPHIC PREPARATORY WORK AND OFFSET LITHOGRAPHIC PRINTING WORK ARE INCLUDED IN THE BARGAINING UNIT).

(SEE DECISION [1971] OLRB REP. 406).

340-71-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION NO. 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. SWISS CHALET BAR-B-Q A DIVISION OF HARVEY'S FOODS LIMITED (RESPONDENT).

UNIT: "ALL COMMISSION DRIVERS OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT DISPATCHERS, PERSONS ABOVE THE RANK OF DISPATCHER, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK."

411-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE LINCOLN COUNTY BOARD OF EDUCATION (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF LINCOLN AND IN THE ADMINISTRATION OFFICES AND ANNEXES IN THE REGIONAL MUNICIPALITY OF NIAGARA, SAVE AND EXCEPT DEPARTMENT HEADS, PERSONS ABOVE THE RANK OF DEPARTMENT HEAD, FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, PERSONS REGULARLY EMPLOYED FOR NOT MORE

THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 152 AND THE RESPONDENT." (NO EMPLOYEES IN THE UNIT). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT ALL EMPLOYEES IN THE PERSONNEL DEPARTMENT ARE EXCLUDED FROM THE BARGAINING UNIT).

431-71-R: SERVICE EMPLOYEES UNION, LOCAL 204 AFFILIATED WITH THE S.E.I.U. AF of L, C.I.O., C.L.C. (APPLICANT) V. ALTAMONT NURSING HOME LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF PICKERING SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (57 EMPLOYEES IN THE UNIT). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE ASSISTANT TO THE PHYSIOTHERAPIST IS NOT AN EMPLOYEE INCLUDED IN THE BARGAINING UNIT).

(SEE DECISION [1971] OLRB REP. 361).

492-71-R: BRICKLAYERS, MASONS & PLASTERERS, INTERNATIONAL UNION OF AMERICA, LOCAL #4, ONTARIO (APPLICANT) V. BUFALINO & MALTESE CONSTRUCTION (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

508-71-R: AMALGAMATED SILVER, JEWELRY AND ALLIED WORKERS UNION LOCAL 44, INTERNATIONAL JEWELRY WORKERS UNION (APPLICANT) V. MCFARLANE GENDRON MANUFACTURING COMPANY LIMITED (BELLEVILLE DIVISION) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BELLEVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (34 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES).

516-71-R: READY-MIX, BUILDING SUPPLY, HYDRO & CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS TEAMSTERS LOCAL UNION NO. 230 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. ARMSTRONG BROTHERS COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN ROCK CRUSHING AT

THE QUARRY OF THE RESPONDENT IN THE TOWNSHIP OF GLOUCESTER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (20 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

539-71-R: TEAMSTERS LOCAL 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. LEON'S FURNITURE LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (7 EMPLOYEES IN THE UNIT).

541-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. C. A. McDOWELL LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSON ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

547-71-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. DOMINION COLOUR CORPORATION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT AJAX, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND LABORATORY TECHNICIANS." (19 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

552-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE HURON COUNTY BOARD OF EDUCATION (RESPONDENT).

UNIT#1: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF HURON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE SERVICE EMPLOYEES' UNION, LOCAL 210, THE EXECUTIVE SECRETARY OF THE DIRECTOR OF EDUCATION, THE PRIVATE SECRETARY OF THE SUPERINTENDENT OF BUSINESS AFFAIRS, THE RECORDING SECRETARY OF THE HURON COUNTY BOARD OF EDUCATION, THE PRIVATE SECRETARY OF THE SUPERINTENDENTS OF EDUCATION, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (35 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (THE BOARD FURTHER NOTED

THE AGREEMENT OF THE PARTIES THAT PERSONS EMPLOYED IN THE CLASSIFICATIONS OF PRIVATE SECRETARY - ELEMENTARY SCHOOL PRINCIPALS; PRIVATE SECRETARY - SECONDARY SCHOOL PRINCIPALS; AUDIO-VISUAL TECHNICIANS AND TEACHERS-AIDES ARE INCLUDED IN BARGAINING UNIT #1).

UNIT #2: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF HURON REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE SERVICE EMPLOYEES' UNION, LOCAL 210, THE EXECUTIVE SECRETARY OF THE DIRECTOR OF EDUCATION, THE PRIVATE SECRETARY OF THE SUPERINTENDENT OF BUSINESS AFFAIRS, THE RECORDING SECRETARY OF THE HURON COUNTY BOARD OF EDUCATION, THE PRIVATE SECRETARY OF THE SUPERINTENDENTS OF EDUCATION AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (7 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

576-71-R: UNITED RUBBER, CORK, LINCOLIUM AND PLASTIC WORKERS OF AMERICA (APPLICANT) V. THE GOODYEAR SERVICE STORES, A DIVISION OF THE GOODYEAR TIRE & RUBBER COMPANY OF CANADA, LIMITED (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT 264 QUEEN STREET EAST IN THE TOWN OF BRAMPTON, SAVE AND EXCEPT SERVICE MANAGERS, PERSONS ABOVE THE RANK OF SERVICE MANAGER, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (3 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT 1490 DUNDAS STREET EAST IN THE TOWN OF MISSISSAUGA, SAVE AND EXCEPT SERVICE MANAGERS, PERSONS ABOVE THE RANK OF SERVICE MANAGER, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (3 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

578-71-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, U.A.W. (APPLICANT) V. FREEDLAND INDUSTRIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN KINGSVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (63 EMPLOYEES IN THE UNIT).

592-71-R: INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS (APPLICANT) V. TOP PAPER PRODUCTS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (24 EMPLOYEES IN THE UNIT).

599-71-R: SERVICE EMPLOYEES UNION, LOCAL 204 AFFILIATED WITH S.E.I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. ROCKCLIFFE NURSING HOME LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN SCARBOROUGH, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (65 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

607-71-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. SILVER SHIELDS MINES INC. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF COLEMAN IN THE DISTRICT OF TIMISKAMING, SAVE AND EXCEPT FOREMEN, SHIFT BOSSES, PERSONS ABOVE THE RANK OF FOREMAN AND SHIFT BOSS, OFFICE AND CLERICAL STAFF, EMPLOYEES IN THE LABORATORY AND IN THE ENGINEERING, GEOLOGICAL AND METALLURGICAL DEPARTMENTS, AND SECURITY GUARDS." (8 EMPLOYEES IN THE UNIT).

660-71-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 837 (APPLICANT) V. W. C. PIETZ LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

662-71-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. GEORGIAN INDUSTRIAL INSULATIONS (RESPONDENT).

UNIT: "ALL INSULATION MECHANICS AND INSULATION MECHANICS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH, VICTORIA AND THE PROVISIONAL COUNTY OF HALIBURTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

665-71-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. SHERMAN SUPER-SONIC INDUSTRIES (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (30 EMPLOYEES IN THE UNIT).

671-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. G. M. PAVING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS, AND SHOP AND YARD EMPLOYEES." (7 EMPLOYEES IN THE UNIT).

672-71-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. UPPER CANADA GLASS (RESPONDENT).

UNIT: "ALL GLAZIERS AND GLAZIERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

676-71-R: THE HOTEL AND CLUB EMPLOYEES' UNION, LOCAL 229, TORONTO OF THE HOTEL AND RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, (A.F.L.-C.I.O.-C.L.C.) (APPLICANT) v. CANADIAN PACIFIC HOTELS LIMITED (FLIGHT KITCHEN TORONTO INTERNATIONAL AIRPORT) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS FLIGHT KITCHEN AT THE TORONTO INTERNATIONAL AIRPORT, MALTON, SAVE AND EXCEPT MANAGER, ASSISTANT MANAGER, DEPARTMENT HEADS, SUPERVISORS AND AUDIT AND OFFICE STAFF." (37 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

678-71-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE CORPORATION OF THE TOWN OF DEEP RIVER (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT DEPARTMENT HEADS, PERSONS ABOVE THE RANK OF DEPARTMENT HEADS, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (7 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

682-71-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION No. 765 (APPLICANT) v. SHOCKBETON QUEBEC INC. (RESPONDENT) v. BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION, LOCAL UNION No. 7 (INTERVENER).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES

OF CLARITY, THE BOARD DECLARED THAT WELDERS WORKING AT THE IRONWORKING TRADE ARE EMPLOYEES INCLUDED IN THE BARGAINING UNIT).

683-71-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. DARNELL CORPORATION OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (19 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

698-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CORPORATION OF HURON COLLEGE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICE AND PLANT OPERATIONS AT LONDON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (16 EMPLOYEES IN THE UNIT).

712-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. NORTH ATLANTIC FORMS LTD-FORMCO INC., JOINT VENTURE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

720-71-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. BIRCHLAND VENEER LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWN OF THESSALON SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (48 EMPLOYEES IN THE UNIT).

743-71-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS LOCAL UNION 721 (APPLICANT) V. ASCOT MILLWRIGHTING (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF ONTARIO (EXCEPT THE TOWNSHIPS OF PICKERING, RAMA, MARA AND THORAH)

AND THE COUNTY OF DURHAM (EXCEPT THE TOWNSHIP OF HOPE), SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

746-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. SCHWENGER CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

747-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. CHANT CONSTRUCTION (ONTARIO) LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

754-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 527 (APPLICANT) V. MAGIL CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

756-71-R: BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION, LOCAL UNION No. 7 (APPLICANT) V. SCHOKBETON QUEBEC INC. (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

764-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. BORDER CITY HOLLAND (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN ENGAGED IN THE OPERATION OF

CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

774-71-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION LOCAL No. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. A. DUROCHER PLUMBING AND HEATING (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

APPLICATIONS CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

100-70-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. CLARK EQUIPMENT OF CANADA, LTD. (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT ST. THOMAS, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, FIELD SALES AND FIELD SERVICE PERSONNEL AND EMPLOYEES COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL LODGE No. 2183 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS." (61 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		76
NUMBER OF PERSONS WHO CAST BALLOTS		75
BALLOTS SEGREGATED AND NOT COUNTED	12	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	38	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	25	

311-71-R: THE LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. LECOURS LUMBER CO. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS SAWMILL AND PLANING MILL AT CALSTOCK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (102 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	122
NUMBER OF PERSONS WHO CAST BALLOTS	120
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	78
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	42

512-71-R: BAKERY & CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL 264 (APPLICANT) V. LEAF CONFECTIONS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF." (207 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	216
NUMBER OF PERSONS WHO CAST BALLOTS	212
BALLOTS SEGREGATED AND NOT COUNTED	1
NUMBER OF SPOILED BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	124
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	85

548-71-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. KLEEN-STIK PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MISSISSAUGA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (44 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	44
NUMBER OF PERSONS WHO CAST BALLOTS	44
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	26
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	17

APPLICATIONS CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

133-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE BRUCE COUNTY BOARD OF EDUCATION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF BRUCE EMPLOYED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANKS OF SUPERVISOR AND FOREMAN, OFFICE AND CLERICAL STAFF, CAFETERIA MANAGERS AND PERSONS REGULARLY EMPLOYED FOR MORE THAN 24 HOURS PER WEEK." (46 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	45
NUMBER OF PERSONS WHO CAST BALLOTS	17
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	10
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	7

213-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. MCKELLAR GENERAL HOSPITAL (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 865 (INTERVENER #1) V. OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION LOCAL 81 (INTERVENER #2) V. BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION A.F. OF L. - C.I.O. - C.L.C. LOCAL 268 (INTERVENER #3).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THUNDER BAY SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENTS DIETITIANS, TECHNICAL STAFF, SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 865, THE RESPONDENT AND OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION LOCAL 81, AND THE RESPONDENT AND BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION." (128 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	132
NUMBER OF PERSONS WHO CAST BALLOTS	94
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	85
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	9

371-71-R: LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION (APPLICANT) V. ALEX WILSON PUBLICATIONS LIMITED (RESPONDENT) V. INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS, DRYDEN LOCAL NO. 105 (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT DRYDEN, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (68 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		65
NUMBER OF PERSONS WHO CAST BALLOTS	65	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	35	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	30	

378-71-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. DOMINION WIRE PRODUCTS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TILLSONBURG, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (22 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		57
NUMBER OF PERSONS WHO CAST BALLOTS	56	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	46	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	10	

390-71-R: HOTEL, CLUBS, RESTAURANTS & TAVERN EMPLOYEES UNION LOCAL 261, A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. VERSAFOOD SERVICES LIMITED HERITAGE RESTAURANTS DIVISION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AT THE LA GAUFRETTE RESTAURANT, 151 SPARKS STREET, OTTAWA, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER AND OFFICE STAFF." (18 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		3
NUMBER OF PERSONS WHO CAST BALLOTS	3	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0	

553-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 1190 (APPLICANT) V. GAWNAR CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (49 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		47
NUMBER OF PERSONS WHO CAST BALLOTS		46
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	24	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	21	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING JULY

NO VOTE CONDUCTED

17763-70-R: CANADIAN UNION OF CONSTRUCTION WORKERS (APPLICANT) V. RELLIFORMS LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER #1) V. COUNCIL OF CONCRETE-FORMING TRADE UNIONS (INTERVENER #2).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES, ALL CONSTRUCTION LABOURERS, ALL REINFORCING RODMEN AND ALL CEMENT MASONS AND CEMENT MASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND YARD EMPLOYEES." (136 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

(SEE DECISION [1971] OLRB REP. 434).

17929-70-R: INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA, LOCAL UNION 1962 (APPLICANT) V. INDUSTRIAL AND DOMESTIC PROTECTION COMPANY LIMITED, AND FAIRVIEW CORPORATION LIMITED (RESPONDENT). (33 EMPLOYEES).

(SEE DECISION [1971] OLRB REP. 415).

405-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 527 (APPLICANT) V. BOYCE CONSTRUCTION (OTTAWA) LIMITED (RESPONDENT). (1 EMPLOYEE).

523-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. VULCAN ASPHALT & SUPPLY COMPANY LIMITED (RESPONDENT) V. OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION #172 (INTERVENER). (NO EMPLOYEES).

558-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. CARIBOU CONST. INC. (RESPONDENT). (3 EMPLOYEES).

579-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 249 (APPLICANT) V. CAMPEAU CORPORATION LIMITED (RESPONDENT). (5 EMPLOYEES).

590-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. ST. THOMAS SANITARY COLLECTION SERVICE LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (25 EMPLOYEES).

661-71-R: THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. M. SULLIVAN & SON LIMITED GENERAL CONTRACTORS (RESPONDENT). (8 EMPLOYEES).

696-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. DAWSON FUEL & SUPPLY COMPANY LIMITED (RESPONDENT). (8 EMPLOYEES).

721-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL #247 (APPLICANT) V. CAMPEAU CORPORATION LIMITED (RESPONDENT). (3 EMPLOYEES).

730-71-R: TEAMSTERS LOCAL UNION 879 (APPLICANT) V. CORNELL CONSTRUCTION COMPANY LIMITED (RESPONDENT). (6 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

533-71-R: UNITED TEXTILE WORKERS OF AMERICA (APPLICANT) V. ACRITEX YARNS LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT PERTH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (180 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	170
NUMBER OF PERSONS WHO CAST BALLOTS	159
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	23
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	136

550-71-R: OIL & GAS BURNER TECHNICIANS UNION, LOCAL 1267 (APPLICANT)
V. SWINGLINE OF CANADA LTD. (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, SECURITY GUARDS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (117 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	114
NUMBER OF PERSONS WHO CAST BALLOTS	86
NUMBER OF SPOILED BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	36
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	48

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

18975-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. TRADEWOODS MANOR NURSING HOME LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT FORT ERIE, SAVE AND EXCEPT PROFESSIONAL AND MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, MAINTENANCE SUPERVISOR, KITCHEN SUPERVISOR, HOUSEKEEPING SUPERVISOR, PERSONS ABOVE THE RANK OF SUPERVISOR, TECHNICAL PERSONNEL, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (15 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	13
NUMBER OF PERSONS WHO CAST BALLOTS	13
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	6
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	7

432-71-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS LOCAL 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. MILLER EQUIPMENT CO. OF CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN MURRAY TOWNSHIP IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (18 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	18
NUMBER OF PERSONS WHO CAST BALLOTS	18
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	18

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING JULY

597-71-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 759 (APPLICANT) V. STEAD AND LINSTROM LIMITED (RESPONDENT). (2 EMPLOYEES).

670-71-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRONWORKERS, LOCAL #765 (APPLICANT) V. PRESCON CO. OF CANADA (RESPONDENT). (NO EMPLOYEES).

708-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION #493 (APPLICANT) V. DINEEN CONSTRUCTION LIMITED (RESPONDENT) V. OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOC. OF THE UNITED STATES AND CANADA LOCAL UNION NO. 70 (INTERVENER). (35 EMPLOYEES).

731-71-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION (APPLICANT) V. C.I.A.G. INSURANCE CO. LTD., TORONTO DIVISION (RESPONDENT). (23 EMPLOYEES).

738-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. RAMEAU CONSTRUCTION LTD. (RESPONDENT). (NO EMPLOYEES).

753-71-R: BRICKLAYERS, MASONS & PLASTERERS, INTERNATIONAL UNION OF AMERICA, LOCAL #4, ONTARIO (APPLICANT) V. NORTHDOWN DRYWALL & CONSTRUCTION, LIMITED (RESPONDENT). (4 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED
OF DURING JULY

18896-70-R: JAMES FULLER, TILLIE GNYF, TILLIE SYMBEL, MARY LALKA, OSCAR PARENTEAU AND ADA MEYERS (APPLICANT) V. HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, LOCAL 254 (RESPONDENT). (NO EMPLOYEES). (WITHDRAWN).

468-71-R: GEORGE STEPHEN (APPLICANT) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (RESPONDENT) V. COCHRANE TOOL & DESIGN LIMITED (INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES OF COCHRANE TOOL & DESIGN LIMITED AT METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (48 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	49
NUMBER OF PERSONS WHO CAST BALLOTS	45
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	18
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	27

755-71-R: THE SUDBURY MEMORIAL HOSPITAL (APPLICANT) V. CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL #1182 CLC (RESPONDENT). (163 EMPLOYEES). (WITHDRAWN).

758-71-R: A GROUP OF EMPLOYEES AS PER ATTACHED LIST (APPLICANTS) V. RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, LOCAL 579 AFL-CIO-CLC (RESPONDENT). (45 EMPLOYEES). (WITHDRAWN).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING
JULY

18-70-U: DOVER CORPORATION (CANADA) LIMITED, TURNBULL ELEVATOR DIVISION (APPLICANT) V. THOSE PERSONS NAMED IN SCHEDULES "A" TO "C" ATTACHED HERETO (RESPONDENTS). (WITHDRAWN).

554-71-U: ASSOCIATED FUR INDUSTRIES OF TORONTO INC. (APPLICANT) V. FUR WORKERS' UNION, LOCAL 82 AFFILIATED WITH AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (RESPONDENT). (WITHDRAWN).

686-71-U: DOMINION GLASS COMPANY LIMITED (APPLICANT) V. G. BOYD, R. CAUL, B. DUPUIS, P. GORMAN, K. HOWARD, L. LANGMAN, K. RAWSKI, J. REBELO, T. STARNINO (RESPONDENTS). (GRANTED).

749-71-U: ELLIS DON LIMITED (APPLICANT) V. LOCAL UNION 1783 OF THE INTERNATIONAL UNION OF THE BROTHERHOOD OF PAINTERS, DECORATORS, AND PAPERHANGERS OF AMERICA; AND MICHAEL CLARK (RESPONDENTS). (WITHDRAWN).

APPLICATION FOR DECLARATION THAT LOCK-OUT UNLAWFUL DISPOSED OF DURING

JULY

741-71-U: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. S. McNALLY & SONS, LIMITED (RESPONDENT). (DISMISSED).

(SEE DECISION [1971] OLRB REP. 430).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING JULY

18952-70-U: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. MARSLAND ENGINEERING LIMITED (RESPONDENT). (DISMISSED).

112-70-U: TREBLEX LIMITED (APPLICANT) V. WILLIAM HOWARD AND THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL NO. 46 (RESPONDENTS). (WITHDRAWN).

532-71-U: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. HUGH M. GRANT LIMITED, HUGH M. GRANT AND CANON UNSWORTH (RESPONDENTS). (GRANTED).

572-71-U: DOMINION BRIDGE COMPANY LIMITED (APPLICANT) V. L. BLAIS, R. BORDELEAU, B. BRANDES, L. CAVION, G. CHARBONNEAU, E. COMTOIS, F. COTE, S. CORBIERE, F. FILES, J. FORTIER, R. FORTIER, R. GASTONGUAY, R. GIRARD, O. KINGWELL, P. LAFRENIERE, C. LAGRANGE, G. LAMARRE, J. LASALLE, W. LAVOIE, J. LESSARD, A. MATHEWS, J. MERCIER, R. MORRISSETTE, R. NICKOLSON, V. NOSEWORTHY, W. O'DELL, P. PAPINEAU, C. PARENT, L. RACINE, Y. RACINE, L. RIVARD, M. ROBICHAUD, S. SNIDER, R. THOMPSON, R. VALENTINO, B. WHITEMAN, R. YOUNG, J. ST. ARNAUD (RESPONDENTS). (GRANTED).

593-71-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. EMERY ENGINEERING & CONTRACTING COMPANY LIMITED AND ROSS McLELLAN (RESPONDENTS). (GRANTED).

669-71-U: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE CITY OF STRATFORD (RESPONDENT). (GRANTED).

687-71-U: DOMINION GLASS COMPANY LIMITED (APPLICANT) V. G. BOYD, R. CAUL, B. DUPUIS, P. GORMAN, K. HOWARD, L. LANGMAN, K. RAWSKI, J. REBELO, AND T. STARNINO (RESPONDENTS). (GRANTED).

700-71-U: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE CITY OF ST. THOMAS (RESPONDENT). (DISMISSED).

748-71-U: WESTERN ONTARIO DISTRICT COUNCIL CARPENTERS, MILLWRIGHTS & MILLMEN DISTRICT COUNCIL OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA AND LOCAL 1946 OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANTS) V. JOHN WILFRED TIEFENBACK, LONDON AND DISTRICT CONSTRUCTION ASSOCIATION (GENERAL & CARPENTRY CONTRACTOR SECTION), ONTARIO FEDERATION OF CONSTRUCTION ASSOCIATIONS, ELLISDON LIMITED, THE FRID CONSTRUCTION COMPANY LTD., THE JOHN HAYMAN & SONS CO. LIMITED, MCKAY-COCKER CONSTRUCTION LTD., JOHN A. MACDONALD LONDON LTD., EVANS-KENNEDY CONSTRUCTION CO. LIMITED (RESPONDENTS). (WITHDRAWN)

COMPLAINTS UNDER SECTION 65(UNFAIR LABOUR PRACTICE) DISPOSED OF DURING

JULY

332-71-U: LOCAL 1590, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A.F.L.-C.I.O.-C.L.C. (COMPLAINANT) V. McDONALD APPLIANCE SERVICE LTD. (RESPONDENT). (DISMISSED).

336-71-U: MRS. SANDRA KALL HOTEL & RESTAURANT EMPLOYEES UNION, LOCAL 743, AFL-CIO, C.L.C., & W. & D.L.S. (COMPLAINANT) V. JOY FOOD ENTERPRISES LIMITED, CARRYING ON BUSINESS UNDER THE TRADE NAME AND STYLE OF DONUT JOY (RESPONDENT). (DISMISSED).

426-71-U: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS LOCAL 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (COMPLAINANT) V. MILLER EQUIPMENT CO. (CANADA) LTD. (RESPONDENT). (WITHDRAWN).

444-71-U: RE: MISS LINDA PARENT HOTEL & RESTAURANT EMPLOYEES UNION LOCAL 743, AFL-CIO, C.L.C., & WINDSOR & DISTRICT LABOUR COUNCIL (COMPLAINANT) V. JOY FOOD ENTERPRISES LIMITED, CARRYING ON BUSINESS UNDER THE TRADE NAME AND STYLE OF DONUT JOY (RESPONDENT). (DISMISSED).

481-71-U: JOHN DAMJANOV (COMPLAINANT) V. MR. A. GALLAGER AND MR. S. KOEHLER (RESPONDENT). (DISMISSED).

(SEE DECISION [1971] OLRB REP. 362).

502-71-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (COMPLAINANT) V. AUTO PALLETS-BOXES ONTARIO LIMITED (RESPONDENT). (WITHDRAWN).

540-71-U: TEAMSTERS LOCAL UNION 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (COMPLAINANT) V. ZEHR'S MARKETS LIMITED (RESPONDENT). (WITHDRAWN).

569-71-U: AGNES H. THOMPSON (COMPLAINANT) V. BLACK DIAMOND CHEESE (RESPONDENT). (WITHDRAWN).

685-71-U: NURSES' ASSOCIATION MONTFORT HOSPITAL (COMPLAINANT) V. MONTFORT HOSPITAL, OTTAWA (RESPONDENT). (WITHDRAWN).

692-71-U: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 11 (COMPLAINANT) V. HYDRO ELECTRIC COMMISSION OF THE BOROUGH OF NORTH YORK (RESPONDENT). (WITHDRAWN).

693-71-U: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 11 (COMPLAINANT) V. HYDRO ELECTRIC COMMISSION OF THE BOROUGH OF NORTH YORK (RESPONDENT). (WITHDRAWN).

APPLICATIONS UNDER SECTION 35(A) DISPOSED OF DURING JULY

129-70-M: KLAAS STEL (APPLICANT) V. THE NORTH YORK CIVIC EMPLOYEES UNION, LOCAL 94, CANADIAN UNION OF PUBLIC EMPLOYEES (RESPONDENT TRADE UNION) V. THE CORPORATION OF THE BOROUGH OF NORTH YORK (RESPONDENT EMPLOYER). (GRANTED).

(SEE DECISION [1971] OLRB REP. 363).

130-70-M: JOHN RENSO NOBELS (APPLICANT) V. THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL UNION NO. 1065 (RESPONDENT TRADE UNION) V. JOSEPH BRANT MEMORIAL HOSPITAL OF THE BURLINGTON-NELSON HOSPITAL (RESPONDENT EMPLOYER). (GRANTED).

(SEE DECISION [1971] OLRB REP. 363).

JURISDICTIONAL DISPUTES

117-70-JD: TREBLEX LIMITED (COMPLAINANT) V. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL NO. 46 AND INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (RESPONDENTS). (WITHDRAWN).

321-71-JD: ABE DICK MASONRY LIMITED (COMPLAINANT) V. LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 493 AND UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 2486 (RESPONDENTS).

(SEE DECISION [1971] OLRB REP. 432).

338-71-JD: PIGOTT CONSTRUCTION COMPANY LIMITED (COMPLAINANT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 597 AND LOCAL UNION 463 OF THE UNITED ASSOCIATION OF JOURNEYMEN OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA (RESPONDENTS).

(SEE DECISION [1971] OLRB REP. 419).

771-71-JD: THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION LOCAL 48 (COMPLAINANT) V. TORONTO BUILDING AND CONSTRUCTION TRADES COUNCIL AND ITS AFFILIATED MEMBERS AS SET OUT IN THE ATTACHED SCHEDULE CLIVE BALLENTINE ALEXANDER MAIN (RESPONDENTS). (WITHDRAWN).

APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING

JULY

445-71-M: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 114 (APPLICANT) V. THE CORPORATION OF THE BOROUGH OF EAST YORK (RESPONDENT).

702-71-M: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW AND ITS LOCAL 35 (APPLICANT) V. ONTARIO STEEL PRODUCTS COMPANY, LIMITED CHATHAM, ONTARIO (RESPONDENT).

REFERENCE TO BOARD PURSUANT TO SECTION 79A

668-71-M: FRED KUEHNER (EMPLOYER) V. LOCAL UNION 1824, OF THE INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES (TRADE UNION).

(SEE DECISION [1971] OLRB REP. 428).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

754-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 527 (APPLICANT) V. MAGIL CONSTRUCTION LIMITED (RESPONDENT). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - TERMINATION

358-71-R: KURT GAYLE, OSBORNE BEST, CHRISTIPHIN ROLLINS, GLADYS PALMER, COLSTONE LOVELL (APPLICANTS) V. SERVICE EMPLOYEES' UNION, LOCAL 204 (RESPONSENT) V. TORONTO GENERAL HOSPITAL (INTERVENER). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 47A

499-71-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF U.S.A. AND CANADA, LOCAL 905 (APPLICANT) V. GOODTIME TOYS INC. (RESPONDENT). (REQUEST DENIED).

(SEE DECISION [1971] OLRB REP. 360).

71] OLRB REP.

PAGES 460 - 553

AUGUST

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\$54



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Monthly Report



ONTARIO LABOUR RELATIONS BOARD

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104

ONTARIO LABOUR RELATIONS BOARD REPORTS

A MONTHLY SERIES OF DECISIONS FROM THE

ONTARIO LABOUR RELATIONS BOARD

CITED [1971] OLRB REP.

ACCREDITATION - APPLICATION FOR MORE THAN ONE TRADE UNION - WHETHER LEGISLATION INTENDS APPLICATION TO BE FOR ONE TRADE UNION OR COUNCIL OF TRADE UNIONS - APPLICATION WITH RESPECT TO DIFFERENT LOCALS - APPROPRIATE GEO- GRAPHIC AREA - WHETHER BOARD WILL COMBINE AREAS OR SECTORS OR BOTH OR PARTS THEREOF.	
THE ONTARIO ERECTORS ASSOCIATION v. THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON- WORKERS, LOCAL UNION 721 v. ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION v. METROPOLITAN TORONTO APART- MENT BUILDERS ASSOCIATION v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 506 v. ONTARIO COUNCIL OF THE NATIONAL HOUSE BUILDERS ASSOCIATION v. HYDRO-ELEC- TRIC POWER COMMISSION OF ONTARIO v. ERECTORS DIVISION, ONTARIO PRECAST CONCRETE MANUFACTURERS' ASSOCIATION v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATED LOCALS	522
ADJOURNMENT - PRACTICE - COUNSEL ENGAGED ELSEWHERE - AMPLE TIME TO INSTRUCT OTHER COUNSEL - WHETHER BOARD WILL GRANT ADJOURNMENT.	
MELDRUM R. GAREAU AND EARL H. DICKSON v. THE REPRESENT- ATIVES' AND TECHNICAL STAFF UNION	538
BARGAINING UNIT - EMPLOYEES - AMBULANCE DRIVERS AND ATTENDANTS - WHETHER INCLUDED IN ALL EMPLOYEE UNIT - WHETHER BARGAIN- ING UNIT INAPPROPRIATE.	
MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES TEAMSTERS LOCAL UNION 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUF- FEURS, WAREHOUSEMEN & HELPERS OF AMERICA v. RELIGIOUS HOSPITALLERS OF ST. JOSEPH OF THE HOTEL DIEU OF KING- STON v. LOCAL 729, INTERNATIONAL UNION OF OPERATING ENGINEERS	461
BARGAINING UNIT - EMPLOYEES - BOARD'S POLICY RESPECTING STUDENTS EMPLOYED DURING SCHOOL VACATION PERIOD - WHETHER SAME PRINCIPLE APPLICABLE TO STUDENTS EM- PLOYED ON A CO-OPERATIVE TRAINING BASIS.	
OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION v. UNION CARBIDE CANADA LIMITED GAS PRODUCTS	461

BARGAINING UNIT - PROVINCE WIDE UNIT AGREED UPON - WHETHER BOARD WILL ACCEDE TO AGREEMENT - WHETHER BARGAINING UNIT LIMITED TO INCORPORATED MUNICIPALITY.

CANADIAN TELEPHONE EMPLOYEES' ASSOCIATION v. TELE-DIRECT LTD. 490

BARGAINING UNIT - TRADE UNION SEEKING TO CARVE OUT SMALLER UNIT FROM GENERAL OVERALL UNIT - WHETHER BOARD WILL APPLY SECTION 6(2).

CHRISTIAN LABOUR ASSOCIATION OF CANADA v. PORT WELLER DRY DOCKS LIMITED v. L.U. 303 INTERNATIONAL ASSOCIATION OF ELECTRICAL WORKERS v. GROUP OF EMPLOYEES 531

BARGAINING UNIT - STUDENTS EMPLOYED ON A CO-OPERATIVE TRAINING PROGRAM WITH UNIVERSITY - PRACTICE OF BOARD.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) v. LELY LIMITED v. GROUP OF EMPLOYEES 539

CHARGES - PRACTICE - DELAY IN FILING DUE TO FAILURE OF CERTAIN EMPLOYEES TO COME FORWARD FOR FEAR OF REPRISALS - WHETHER BOARD WILL ENTERTAIN CHARGES.

HOTELS, CLUBS, RESTAURANTS, TAVERN EMPLOYEES UNION LOCAL 261, OTTAWA, AFFILIATED WITH AFL-CIO-CLC v. COMMONWEALTH HOLIDAY INNS OF CANADA LIMITED v. GROUP OF EMPLOYEES 543

CHARGES - REPRESENTATION VOTE - EMPLOYER INTERFERENCE IN ORGANIZATIONAL CAMPAIGN - SECTION 7(5) - WHETHER CUMULATIVE EFFECT OF INTERFERENCE IS SUCH THAT EMPLOYEES' ABILITY TO MAKE A FREE CHOICE IS DESTROYED.

GENERAL DRIVERS LOCAL 989 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA v. HOFFMAN CONCRETE PRODUCTS LIMITED v. GROUP OF EMPLOYEES 540

COLLECTIVE AGREEMENT - S. 32(1) - FAILURE TO PROVIDE RECOGNITION CLAUSE - WHETHER AGREEMENT CONSTITUTES COLLECTIVE AGREEMENT.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 v. CADILLAC DEVELOPMENT CORPORATION LIMITED 536

COLLECTIVE AGREEMENT - TRADE UNION - S. 40 - NOTICE OF DESIRE TO BARGAIN - S. 13 - WHETHER VALID APPOINTMENT OF CONCILIATION OFFICER - FIRST LOCAL UNION SURRENDERING CHARTER - INTERNATIONAL ISSUING NEW CHARTER IN DIFFERENT NAME AND NUMBER - SECOND LOCAL ASSUMING JURISDICTION OF FIRST LOCAL - OFFICERS OF FIRST LOCAL ASSUMING SAME OFFICES IN SECOND LOCAL - SECOND LOCAL PLACED IN TRUSTEESHIP - SUBSEQUENT COLLECTIVE AGREEMENT ENTERED INTO IN NAME OF FIRST LOCAL WITH KNOWLEDGE THAT IT SURRENDERED CHARTER - MEMBERS OF FIRST LOCAL BECOMING MEMBERS OF SECOND LOCAL - UNION DUES DEPOSITED IN NAME OF SECOND LOCAL - SUBSEQUENT CHARTERING OF THIRD LOCAL WITH SAME NUMBER AS FIRST LOCAL - THIRD LOCAL PLACED UNDER TRUSTEESHIP IMMEDIATELY UPON FORMATION - WHETHER SURRENDER OF CHARTER BY FIRST LOCAL AND RELINQUISHING JURISDICTION CAUSES IT TO GO OUT OF EXISTENCE - WHETHER BOARD SHOULD TREAT PARTY TO COLLECTIVE AGREEMENT AS SECOND LOCAL BECAUSE PARTIES INTENTIONALLY NAMED FIRST LOCAL AS A PARTY WITH KNOWLEDGE THAT BARGAINING RIGHTS HELD BE SECOND LOCAL - WHETHER THIRD LOCAL WITH SAME NUMBER AND JURISDICTION TO FIRST LOCAL IS A DIFFERENT ENTITY - WHETHER FIRST AND THIRD LOCALS SUBSISTING TRADE UNIONS AT TIME REQUEST MADE FOR A CONCILIATION OFFICER - WHETHER VALID NOTICE SERVED UNDER SECTION 40 REQUIRING APPOINTMENT OF CONCILIATION OFFICER - WHETHER MINISTER HAS AUTHORITY TO APPOINT CONCILIATION OFFICER.

GOLDSTEIN FOODMART LTD. v. RETAIL CLERKS UNION, LOCAL 486
 CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION
 v. CANADIAN MERCHANDISING EMPLOYEES' UNION

549

EMPLOYEES - BARGAINING UNIT - BOARD'S POLICY RESPECTING STUDENTS EMPLOYED DURING SCHOOL VACATION PERIOD - WHETHER SAME PRINCIPLE APPLICABLE TO STUDENTS EMPLOYED ON A CO-OPERATIVE TRAINING.

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION v.
 UNION CARBIDE CANADA LIMITED GAS PRODUCTS

464

EMPLOYEES - BARGAINING UNIT - AMBULANCE DRIVERS AND ATTENDANTS - WHETHER INCLUDED IN ALL EMPLOYEE UNIT - WHETHER BARGAINING UNIT INAPPROPRIATE.

MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES TEAMSTERS LOCAL UNION 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA v. RELIGIOUS HOSPITALERS OF ST. JOSEPH OF THE HOTEL DIEU OF KINGSTON v. LOCAL 729, INTERNATIONAL UNION OF OPERATING ENGINEERS

461

EVIDENCE - SALE OF BUSINESS - S. 47A - EVIDENTIARY BURDEN
AS DISTINCT FROM LEGAL BURDEN - WHETHER APPLICANT MUST
ESTABLISH EXISTENCE OF A SALE - FACTS PECULIARLY WITHIN
KNOWLEDGE - APPLICANT FAILING TO ESTABLISH PRIMA FACIE
FACT OF SALE.

INTERNATIONAL WOODWORKERS OF AMERICA v. WOODWAY STRUC-
TURAL COMPONENTS v. GROUP OF EMPLOYEES 545

JURISDICTIONAL DISPUTE - LABOURERS AND CARPENTERS - ERECTION
OF TUBULAR METAL SCAFFOLDING - NO CRAFT SKILLS REQUIRED
TO DO THE WORK.

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL
837 v. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF
AMERICA, LOCAL UNION 18 AND JOHN E. SMITH & SON LATH,
PLASTER & ACOUSTICAL CONTRACTORS (1968) LIMITED 466

JURISDICTIONAL DISPUTE - LABOURERS AND PIPEFITTERS - INSTAL-
LATION OF FIBRE GLASS PIPE - HANDLING, LAYING AND JOIN-
ING.

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL
607 v. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES
OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED
STATES AND CANADA, LOCAL 628 AND CANADIAN INTERNATIONAL
COMSTOCK COMPANY LIMITED 477

MEMBERSHIP EVIDENCE - RECEIPTS NOT COUNTERSIGNED - WHETHER
ACCEPTABLE.

CANADIAN TELEPHONE EMPLOYEES' ASSOCIATION v. TEL-DIRECT
LTD. 490

PETITION - EMPLOYEE TESTIFYING AS TO PERSONAL KNOWLEDGE WITH
RESPECT TO ONE SIGNATURE - NO DIRECT EVIDENCE CONCERNING
SIGNATURE OF REMAINING EMPLOYEES - EFFECT.

PRINTING SPECIALTIES AND PAPER PRODUCTS UNION, LOCAL 466
v. DATA BUSINESS FORMS LIMITED v. GROUP OF EMPLOYEES 544

PRACTICE - ADJOURNMENT - COUNSEL ENGAGED ELSEWHERE - AMPLE
TIME TO INSTRUCT OTHER COUNSEL - WHETHER BOARD WILL
GRANT ADJOURNMENTS.

MELDRUM R. GAREAU AND EARL H. DICKSON v. THE REPRESENT-
ATIVES' AND TECHNICAL STAFF UNION 538

PRACTICE - CHARGES - DELAY IN FILING DUE TO FAILURE OF CERTAIN EMPLOYEES TO COME FORWARD FOR FEAR OF REPRISALS - WHETHER BOARD WILL ENTERTAIN CHARGES.

HOTELS, CLUBS, RESTAURANTS, TAVERN EMPLOYEES UNION LOCAL 261, OTTAWA, ONTARIO, AFFILIATED WITH AFL-CIO-CLC v. COMMONWEALTH HOLIDAY INNS OF CANADA LIMITED v. GROUP OF EMPLOYEES

543

PRACTICE - TERMINATION - APPLICANT NOT A MEMBER OF THE BARGAINING UNIT - WHETHER ENTITLED TO BRING APPLICATION.

CLIVE R. DYKER v. RETAIL CLERKS INTERNATIONAL ASSOCIATION LOCAL 206

474

PRACTICE - TRADE UNION SEEKING TO INTERVENE AFTER CERTIFICATE GRANTED - INTERVENER NOT DEMONSTRATING IT HAD BARGAINING RIGHTS OR THAT IT REPRESENTS EMPLOYEES AFFECTED BY APPLICATION FOR CERTIFICATION - WHETHER INTERVENER ENTITLED TO STATUS OR WHETHER INTERVENER A STRANGER - RULE 71(2).

CHRISTIAN TRADE UNIONS OF CANADA (LOCAL 6) v. G. S. WARK LIMITED

526

RELIGIOUS OBJECTION - S. 35A - EMPLOYEE REQUESTING EXEMPTION FROM UNION MEMBERSHIP AND PAYMENT OF DUES, FEES OR ASSESSMENTS TO UNION - EMPLOYEE PREFERING TO BELONG TO CLAC - WHETHER BELIEF CONTRARY TO SECTION 10 OR SECTION 4(2) OF THE HUMAN RIGHTS CODE.

DIANE STROOP v. THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL UNION NO. 1065 v. JOSEPH BRANT MEMORIAL HOSPITAL OF THE BURLINGTON-NELSON HOSPITAL

515

RELIGIOUS OBJECTION - S. 35A - EMPLOYEE REQUESTING EXEMPTION FROM UNION MEMBERSHIP AND PAYMENT OF DUES, FEES OR ASSESSMENTS TO UNION - WHETHER OBJECTION POLITICAL OR RELIGIOUS - OBJECTION TO UNION SUPPORT OF NEW DEMOCRATIC PARTY - WHETHER BELIEF REASONABLE OR WHETHER EMPLOYEE HAS BELIEF - WHETHER EMPLOYEE REQUIRED TO SEEK EXEMPTION DURING SUBSEQUENT COLLECTIVE AGREEMENTS.

RALPH TERPSTRA v. THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL UNION NO. 1065 v. JOSEPH BRANT MEMORIAL HOSPITAL OF THE BURLINGTON-NELSON HOSPITAL

505

REPRESENTATION VOTE - CHARGES - EMPLOYER INTERFERENCE IN ORGANIZATIONAL CAMPAIGN - SECTION 7(5) - WHETHER CUMULATIVE EFFECT OF INTERFERENCE IS SUCH THAT EMPLOYEES' ABILITY TO MAKE A FREE CHOICE IS DESTROYED.

GENERAL DRIVERS LOCAL 989 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA v. HOFFMAN CONCRETE PRODUCTS LIMITED v. GROUP OF EMPLOYEES 540

SALE OF BUSINESS - EVIDENCE - S. 47A - EVIDENTIARY BURDEN AS DISTINCT FROM LEGAL BURDEN - WHETHER APPLICANT MUST ESTABLISH EXISTENCE OF A SALE - FACTS PECULIARLY WITHIN KNOWLEDGE - APPLICANT FAILING TO ESTABLISH PRIMA FACIE FACT OF SALE.

INTERNATIONAL WOODWORKERS OF AMERICA v. WOODWAY STRUCTURAL COMPONENTS v. GROUP OF EMPLOYEES 545

SECTION 65 - CUT DOWN IN WORK FORCE NECESSARY FOR LEGITIMATE BUSINESS REASONS - SELECTION OF PERSONS TO BE LAID OFF CONTRARY TO THE ACT.

INTERNATIONAL WOODWORKERS OF AMERICA v. COMMODORE HOMES.... 468

SECTION 65 - TRADE UNION - WHETHER UNION MEMBER REQUIRED TO UTILIZE INTERNAL UNION PROCEDURE BEFORE BRINGING COMPLAINT - REQUIREMENT OF NATURAL JUSTICE AND DUE PROCESS - UNION OFFICER ENGAGING IN ACTIVITY CONTRARY TO INTERESTS OF UNION - WHETHER REMOVAL FROM OFFICE VIOLATION OF ACT.

CANADIAN TEXTILE AND CHEMICAL UNION v. INTERNATIONAL CHEMICAL WORKERS UNION; AND THOMAS E. BOYLE, INTERNATIONAL PRESIDENT; THOMAS SLOAN, INT. VICE-PRESIDENT; R. W. STEWART, ASSISTANT CANADIAN DIRECTOR 469

SECTION 65 - WHETHER COMPANY RESPONSIBLE FOR ACTIONS OF FOREMAN - WHETHER VIOLATION OF SECTION 50.

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 v. DODGE CONSTRUCTION COMPANY LIMITED 496

SECTION 65 - EMPLOYEE REINSTATED TO EMPLOYMENT AFTER INVESTIGATION BY FIELD OFFICER - ASSIGNMENT WHERE OPPORTUNITY TO EARN COMMISSION SERIOUSLY CURTAILED - WHETHER BOARD WILL ORDER RETURN TO FOREMAN POSITION - WHETHER EMPLOYEE COMPENSATED FOR LOST OPPORTUNITY.

MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSE-MEN & HELPERS OF AMERICA v. SWISS CHALET B-Q A DIVISION OF HARVEY FOODS	462
SECTION 65 - NO EVIDENCE - COMPANY HAD KNOWLEDGE OF UNION ACTIVITY - COMPANY IN POOR ECONOMIC CONDITION - WHETHER COMPLAINANT SATISFIED ONUS.	
LOCAL 1590, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A.F.L.-C.I.O.-C.L.C. v. McDONALD APPLIANCE SERVICE LTD.	465
SECTION 65 - EMPLOYEES DISCHARGED FOR DUAL UNIONSIM - S. 35(2) - WHETHER TRADE UNION REQUIRED DISMISSAL - WHETHER TRADE UNION AND EMPLOYEE LIABLE.	
CANADIAN UNION OF CONSTRUCTION WORKERS v. SCHWENGER CONSTRUCTION LIMITED AND LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 527	481
SECTION 65 - WHETHER DISCHARGE CONTRARY TO THE LABOUR RELATIONS ACT.	
INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) v. LELY LIMITED	485
TERMINATION - PRACTICE - APPLICANT NOT A MEMBER OF THE BARGAINING UNIT - WHETHER ENTITLED TO BRING THE APPLICATION.	
CLIVE R. DYKER v. RETAIL CLERKS INTERNATIONAL ASSOCIATION LOCAL 206	474
TRADE UNION - CONSTITUTION-CUPE - AMBULANCE SERVICE - PRIVATE EMPLOYEES - WHETHER APPLICANT ENTITLED TO REPRESENT EMPLOYEES - APPLICANT'S CONSTITUTION NOT EXCLUDING EMPLOYEES.	
CANADIAN UNION OF PUBLIC EMPLOYEES v. TIMMINS AMBULANCE SERVICE - OWNED AND OPERATED BY MR. YVON BOUCHER	472
TRADE UNION - PROFESSIONAL ENGINEERS - ORGANIZATION COMPOSED OF MANAGEMENT PERSONNEL - WHETHER TRADE UNION.	
SOCIETY OF ONTARIO HYDRO PROFESSIONAL ENGINEERS AND ASSOCIATES v. HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO.....	501

TRADE UNION - SECTION 65 - WHETHER UNION MEMBER REQUIRED TO UTILIZE INTERNAL UNION PROCEDURE BEFORE BRINGING COMPLAINT - REQUIREMENT OF NATURAL JUSTICE AND DUE PROCESS - UNION OFFICER ENGAGING IN ACTIVITY CONTRARY TO INTERESTS OF UNION - WHETHER REMOVAL FROM OFFICE VIOLATION OF THE ACT.

CANADIAN TEXTILE AND CHEMICAL UNION v. INTERNATIONAL CHEMICAL WORKERS UNION; AND THOMAS E. BOYLE, INTERNATIONAL PRESIDENT; THOMAS SLOAN, INT. VICE-PRESIDENT; R. W. STEWART, ASSISTANT CANADIAN DIRECTOR

469

TRADE UNION - S. 6(2) - WHETHER UNION PERTAINS TO SKILLS OR CRAFTS - CERTIFICATES IN CONSTRUCTION INDUSTRY GRANTED TO TRADE UNION - WHETHER LIMITED TO CONSTRUCTION INDUSTRY.

CHRISTIAN LABOUR ASSOCIATION OF CANADA v. PORT WELLER DRY DOCKS LIMITED v. L. U. 303 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS v. GROUP OF EMPLOYEES

531

TRADE UNION - FIRST LOCAL UNION SURRENDERING CHARTER - INTERNATIONAL ISSUING NEW CHARTER IN DIFFERENT NAME AND NUMBER - SECOND LOCAL ASSUMING JURISDICTION OF FIRST LOCAL - OFFICERS OF FIRST LOCAL ASSUMING SAME OFFICES IN SECOND LOCAL - SECOND LOCAL PLACED IN TRUSTEESHIP - SUBSEQUENT COLLECTIVE AGREEMENT ENTERED INTO IN NAME OF FIRST LOCAL WITH KNOWLEDGE THAT IT SURRENDERED CHARTER - MEMBERS OF FIRST LOCAL BECOMING MEMBERS OF SECOND LOCAL - UNION DUES DEPOSITED IN NAME OF SECOND LOCAL - SUBSEQUENT CHARTERING OF THIRD LOCAL WITH SAME NUMBER AS FIRST LOCAL - THIRD LOCAL PLACED UNDER TRUSTEESHIP IMMEDIATELY UPON FORMATION - WHETHER SURRENDER OF CHARTER BY FIRST LOCAL AND RELINQUISHING JURISDICTION CAUSES IT TO GO OUT OF EXISTENCE - WHETHER BOARD SHOULD TREAT PARTY TO COLLECTIVE AGREEMENT AS SECOND LOCAL BECAUSE PARTIES INTENTIONALLY NAMED FIRST LOCAL AS A PARTY WITH KNOWLEDGE THAT BARGAINING RIGHTS HELD BY SECOND LOCAL - WHETHER THIRD LOCAL WITH SAME NUMBER AND JURISDICTION TO FIRST LOCAL IS A DIFFERENT ENTITY - WHETHER FIRST AND THIRD LOCALS SUBSISTING TRADE UNIONS AT TIME REQUEST MADE FOR A CONCILIATION OFFICER - WHETHER VALID NOTICE SERVED UNDER SECTION 40 REQUIRING APPOINTMENT OF CONCILIATION OFFICER - WHETHER MINISTER HAS AUTHORITY TO APPOINT CONCILIATION OFFICER.

GOLDSTEIN FOODMART LTD. v. RETAIL CLERKS UNION, LOCAL 486 CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION

549

4. OF THE 9 PERSONS WHO WERE INCLUDED ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT FOR BARGAINING UNIT #1, NONE WERE CLAIMED BY THE APPLICANT AS MEMBERS. THE BOARD IS ACCORDINGLY SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT #1, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 28, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

5. THE APPLICATION IS DISMISSED WITH RESPECT TO BARGAINING UNIT #1.

6. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT THE STEPHEN LEACOCK SCHOOL IN THE BOROUGH OF SCARBOROUGH, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING (HEREINAFTER REFERRED TO AS BARGAINING UNIT #2).

7. OF THE 10 PERSONS WHOSE NAMES APPEAR ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT WITH RESPECT TO BARGAINING UNIT #2, ALL WERE CLAIMED BY THE APPLICANT AS MEMBERS. THE BOARD IS ACCORDINGLY SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT #2, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 28, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO BARGAINING UNIT #2.

9. THE BOARD RESERVES ITS DECISION WITH RESPECT TO THE OTHER ISSUES IN THIS MATTER UNTIL SUCH TIME AS THE WRITTEN SUBMISSIONS OF THE PARTIES HAVE BEEN RECEIVED BY THE BOARD IN ACCORDANCE WITH ITS DIRECTION.

788-71-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES TEAMSTERS LOCAL UNION 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) v. RELIGIOUS HOSPITALLERS OF ST. JOSEPH OF THE HOTEL DIEU OF KINGSTON (RESPONDENT) v. LOCAL 729, INTERNATIONAL UNION OF OPERATING ENGINEERS (INTERVENER).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: I. J. THOMSON AND GEORGE HARRISON FOR THE APPLICANT; C. FISHER AND D. ALAN PAGE FOR THE RESPONDENT; J. ROBINSON FOR THE INTERVENER.

DECISION OF THE BOARD: AUGUST 13, 1971.

1. THE NAME "HOTEL DIEU HOSPITAL" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "RELIGIOUS HOSPITALLERS OF ST. JOSEPH OF THE HOTEL DIEU OF KINGSTON".
2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.
3. IN THIS APPLICATION FOR CERTIFICATION, THE APPLICANT IS SEEKING A BARGAINING UNIT OF ALL AMBULANCE DRIVERS AND ATTENDENTS OF THE RESPONDENT AT KINGSTON EXCLUDING SUPERVISORS AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL 729 OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS. THERE IS NO OTHER COLLECTIVE AGREEMENT OR CERTIFICATE COVERING ANY OF THE EMPLOYEES OF THE HOSPITAL. THE APPLICANT IS NOT THEREFORE SEEKING TO 'CARVE OUT' A UNIT FROM A LARGER EXISTING UNIT OF ORGANIZED EMPLOYEES.
4. HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT THE AMBULANCE DRIVERS AND ATTENDANTS SHARE A COMMUNITY OF INTEREST WITH OTHER CLASSIFICATIONS IN THE HOSPITAL, AS FOR EXAMPLE WITH ORDERLIES, WHO ARE TRADITIONALLY INCLUDED IN "ALL EMPLOYEE" HOSPITAL UNITS.
5. WE THEREFORE FIND THAT THE BARGAINING UNIT AS APPLIED FOR IS INAPPROPRIATE.
6. ACCORDINGLY, THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN ANY BARGAINING UNIT WHICH THE BOARD MIGHT FIND TO

BE APPROPRIATE AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON AUGUST 4, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. THE APPLICATION IS THEREFORE DISMISSED.

339-71-U: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (COMPLAINANT) V. SWISS CHALET B-Q A DIVISION OF HARVEY FOODS (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS D. B. ARCHER AND J. D. BELL.

APPEARANCES AT THE HEARING: I. J. THOMSON AND GEO. HARRISON FOR THE COMPLAINANT; NO ONE APPEARING FOR THE RESPONDENT.

DECISION OF THE BOARD: AUGUST 13, 1971.

1. THIS IS A COMPLAINT UNDER SECTION 65 OF THE ACT IN WHICH THE COMPLAINANT ALLEGES THAT KENNETH WM. COTTERELL HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTIONS 50 AND 52 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT REQUESTS THAT COTTERELL BE RETURNED TO WORK WITHOUT LOSS OF PAY OR SENIORITY.

2. THE RESPONDENT DID NOT APPEAR AT THE HEARING ALTHOUGH DULY NOTIFIED OF THE TIME, DATE AND PLACE THEREOF. THE ONLY EVIDENCE BEFORE THE BOARD, THEREFORE, IS THAT OF THE COMPLAINANT.

3. THE GRIEVOR WAS INSTRUMENTAL IN ORGANIZING THE EMPLOYEES OF THE RESPONDENT AS MEMBERS OF THE COMPLAINANT UNION.

4. ON APRIL 23, 1971, COTTERELL, WHO WAS EMPLOYED AS A DELIVERY DRIVER PAID ON A COMMISSION BASIS, WAS DISCHARGED AT 5:30 P.M. BY THE COMPANY DISPATCHER. THE REASONS GIVEN WERE THAT HE HAD REFUSED TO MAKE A DELIVERY, THAT HE WAS DRIVING A STATION WAGON AND FINALLY THAT COTTERELL WAS CAUSING THE DISPATCHER TROUBLE. COTTERELL DENIES THAT HE HAD EVER REFUSED A DELIVERY. HE EXPLAINED, HE USED THE STATION WAGON BECAUSE THE MORRIS CAR HE NORMALLY USED HAD BEEN STOLEN. INsofar AS CAUSING TROUBLE IS CONCERNED, COTTERELL SAID HE HAD BEEN WORKING ON BEHALF OF THE OTHER DRIVERS IN AN EFFORT TO GET THE UNION IN. HE BELIEVED THE COMPANY WAS AWARE OF THIS ACTIVITY,

AND THAT THAT IS THE ONLY EXPLANATION HE COULD FIND FOR THE STATEMENT THAT HE WAS CAUSING TROUBLE.

5. COTTERELL WAS REEMPLOYED BY THE RESPONDENT ON MAY 1ST, 1971 AFTER INVESTIGATION BY A FIELD OFFICER OF THE BOARD. THERE IS, HOWEVER, NO SETTLEMENT BEFORE THE BOARD UNDER THE PROVISIONS OF SECTION 65(6). HE HAD BEEN WORKING OUT OF THE BLOOR STREET PREMISES OF THE RESPONDENT BEFORE THE DISCHARGE. ON BEING RE-HIRED, HE WAS ASSIGNED TO DELIVER WORK AT THE RESPONDENT'S ESTABLISHMENT AT SCARBOROUGH.

6. THE EVIDENCE IS THAT THE RESPONDENT'S BUSINESS AT SCARBOROUGH DOES NOT PROVIDE AN OPPORTUNITY TO EARN COMMISSIONS ON DELIVERIES EQUAL TO THOSE AVAILABLE TO DRIVERS WORKING OUT OF THE BLOOR ST. ESTABLISHMENT. THIS IS DUE TO LACK OF VOLUME OF BUSINESS AND THE INCREASED DISTANCES THE DRIVERS ARE REQUIRED TO TRAVEL IN ORDER TO MAKE DELIVERIES. IN THE CASE OF COTTERELL, THE ASSIGNMENT TO SCARBOROUGH INCREASED SUBSTANTIALLY THE DISTANCE BETWEEN HIS HOME AND HIS NEW PLACE OF EMPLOYMENT.

7. ON THE BASIS OF THE EVIDENCE, THE BOARD FINDS THAT THE RESPONDENT HAS DEALT WITH COTTERELL CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT; FIRSTLY IN DISCHARGING HIM BECAUSE HE WAS A MEMBER OF A TRADE UNION, AND SECONDLY, AFTER REEMPLOYING HIM, CONTINUING TO DISCRIMINATE AGAINST HIM BY MOVING HIM TO AN AREA WHERE HIS OPPORTUNITY TO EARN COMMISSION WAS SERIOUSLY CURTAILED.

8. THE BOARD THEREFORE DIRECTS THAT COTTERELL SHALL BE FORTHWITH RETURNED TO HIS JOB AT THE BLOOR STREET ESTABLISHMENT FROM WHICH HE WAS DISCHARGED.

9. THE BOARD DIRECTS THE RESPONDENT TO PAY TO COTTERELL THE SUM OF \$90.00 COMPENSATION FOR LOSS OF NET EARNINGS BETWEEN APRIL 23RD AND MAY 1ST, 1971.

10. THE EVIDENCE IS THAT COTTERELL'S AVERAGE NET EARNINGS WHILE AT SCARBOROUGH, WERE \$60.00 PER WEEK LESS THAN HIS AVERAGE NET EARNINGS HAD BEEN AT BLOOR STREET. THE BOARD THEREFORE DIRECTS THAT THE RESPONDENT PAY TO COTTERELL THE SUM OF \$770.00 COMPENSATION FOR LOSS OF COMMISSION, FROM MAY 1ST, 1971 TO THE DATE OF HEARING ON JULY 29TH, 1971.

11. THE BOARD DIRECTS THAT THE PARTIES MEET FORTHWITH WITH A VIEW TO AGREEING ON THE AMOUNT OF LOSS OF COMMISSION, IF ANY, THAT KENNETH WM. COTTERELL SUSTAINED BETWEEN JULY 29, 1971 AND THE DATE OF HIS REEMPLOYMENT BY THE RESPONDENT IN HIS JOB AT BLOOR STREET, WHICH SHALL THEN BE PAID TO HIM. IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES ON THE AMOUNT ABOVE REFERRED TO, WITHIN 14 DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD

AS THE PARTIES MAY MUTUALLY AGREE, AT THE REQUEST OF EITHER PARTY, THE BOARD WILL HOLD A FURTHER HEARING AT WHICH THE PARTIES WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND MAKE REPRESENTATIONS AS TO ANY ADDITIONAL AMOUNT TO BE PAID TO COTTERELL WHICH WILL THEREAFTER BE DETERMINED BY THE BOARD.

736-71-R: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT) v. UNION CARBIDE CANADA LIMITED GAS PRODUCTS (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: F. GEDDES FOR THE APPLICANT; D.F.O. HERSEY, G. W. VENABLES AND R. F. WOLFF FOR THE RESPONDENT.

DECISION OF THE BOARD: AUGUST 9, 1971.

1. THE NAME "UNION CARBIDE CANADA LTD. (GAS PRODUCTS)" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "UNION CARBIDE CANADA LIMITED GAS PRODUCTS".
2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.
3. AT THE HEARING OF THIS MATTER ON AUGUST 4, 1971, THE RESPONDENT SOUGHT THE EXCLUSION OF STUDENTS EMPLOYED ON A CO-OPERATIVE TRAINING BASIS. ALTHOUGH THERE WERE NO SUCH STUDENTS IN THE EMPLOY OF THE RESPONDENT AT THE DATE OF THE APPLICATION, THE RESPONDENT HAS INDICATED THAT IT HAS A HISTORY OF EMPLOYING THEM IN THE PAST.
4. REGARDING STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, BOARD POLICY IS DEFINED IN THE CANADIAN PITTSBURGH INDUSTRIES LIMITED CASE OLRB M.R. JULY, 1968 AT P.367 AS FOLLOWS:

THE GENERAL POLICY OF THE BOARD IS TO EXCLUDE STUDENTS FROM THE BARGAINING UNIT AT THE REQUEST OF THE OTHER PARTY WHERE THE COMPANY IS PRESENTLY EMPLOYING STUDENTS OR HAS HAD STUDENTS IN ITS EMPLOY IN THE PAST AND EXPECTS TO DO SO IN THE FUTURE. WHERE STUDENTS ARE NOT PRESENTLY EMPLOYED, THE BOARD MAKES INQUIRIES OF THE PARTIES AS TO THE EMPLOYMENT HISTORY AND THE FUTURE INTENTION

OF EMPLOYING STUDENTS AND USUALLY ACCEPTS THEIR REPRESENTATIONS ON WHICH THE BOARD MAKES ITS DECISION.

5. WE SEE NO REASON WHY SUCH A POLICY SHOULD NOT LIKEWISE BE APPLICABLE TO STUDENTS EMPLOYED ON A CO-OPERATIVE TRAINING BASIS AND WE ACCORDINGLY REQUEST THE RESPONDENT TO SUPPLY THE BOARD WITH FURTHER PARTICULARS OF ITS EXPECTATIONS OF EMPLOYING SUCH STUDENTS IN THE FUTURE.
6. FAILING RECEIPT OF SUCH PARTICULARS BY FRIDAY, AUGUST 13, 1971, THE BOARD WILL PROCEED ON THE BASIS OF THE REPRESENTATIONS MADE AT THE INITIAL HEARING OF THIS MATTER.
7. THE MATTER IS REFERRED TO THE REGISTRAR.

332-71-U: LOCAL 1590, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS A.F.L.-C.I.O.-C.L.C. (COMPLAINANT) v. MCDONALD APPLIANCE SERVICE LTD. (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: ROBERT BLAIR AND MORLEY FISHER FOR THE COMPLAINANT; A. J. CLARK, Q.C. AND J. W. EDWARDS FOR THE RESPONDENT.

DECISION OF THE BOARD: JULY 30, 1971.

1. THIS IS A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT WHEREIN THE COMPLAINANT HAS COMPLAINED THAT STEPHEN VERNON STREET, WILLIAM T. HUNDY, MERVYN G. JEFFREY, LLOYD MAYNARD, JOHN T. CROWTHER, ELIA DAIDES AND GORDON GILROY WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50(A) AND (C) AND SECTION 52 OF THE LABOUR RELATIONS ACT. AT THE HEARING IN THIS MATTER THE COMPLAINANT ABANDONED THE COMPLAINT WITH RESPECT TO ELIA DAIDES AND GORDON GILROY.
2. THE EVIDENCE IN THIS CASE ESTABLISHED THAT THE AGGRIEVED PERSONS WERE DISCHARGED ON THE DAY IMMEDIATELY FOLLOWING A UNION MEETING WHICH WAS CALLED TO ORGANIZE THE RESPONDENT'S EMPLOYEES. THE UNION ALLEGED THAT THE EMPLOYEES WERE DISCHARGED BECAUSE OF THEIR SUPPORT FOR THE UNION. MOST CERTAINLY IT MUST BE SAID THAT THE TIMING OF THE DISCHARGES RAISED SUSPICION IN THIS REGARD.
3. HOWEVER, THE RESPONDENT CALLED EVIDENCE TO ESTABLISH THAT THE RESPONDENT'S FINANCIAL POSITION WAS SUCH THAT IT REQUIRED A SUB-

STANTIAL CUT-BACK IN EMPLOYEES. APPROXIMATELY ONE MONTH PRIOR TO THE DISCHARGES THE RESPONDENT HAD ANNOUNCED THAT IT WAS UNABLE TO GRANT ANY WAGE INCREASES BECAUSE OF THE PROFIT AND LOSS POSITION OF THE COMPANY. THIS ANNOUNCEMENT WAS FOLLOWED BY A TWO DAY STRIKE BY ALL ITS APPLICANCE SERVICEMEN, INCLUDING THE EMPLOYEES WITH WHOM WE ARE CONCERNED. THE COMPANY MADE CERTAIN CONCESSIONS TO THE EMPLOYEES AND THE EMPLOYEES RETURNED TO WORK. HOWEVER, THE COMPANY REDUCED THE NUMBER OF ITS OFFICE EMPLOYEES BY 20 PER CENT IN ITS ATTEMPTS TO REDUCE OVERHEAD. SHORTLY THEREAFTER ONE OF THE PERSONS ON WHOSE BEHALF THIS COMPLAINT WAS FILED WAS FOUND BY THE COMPANY TO HAVE OBTAINED PARTS FROM THE COMPANY UNDER FALSE PRETENCES. THE EMPLOYEE INTENDED TO INSTALL THE PARTS IN A FREEZER WHICH HE WAS RECONDITIONING FOR THE PURPOSE OF RESALE. THIS EMPLOYEE HAD BEEN PREVIOUSLY WARNED ABOUT SIMILAR MATTERS AND THE COMPANY THEREFORE DECIDED TO DISCHARGE THE EMPLOYEE. ALL OF THIS TOOK PLACE PRIOR TO THE UNION MEETING. HAVING DECIDED TO DISCHARGE THE EMPLOYEE REFERRED TO ABOVE, THE COMPANY ALSO DECIDED TO REDUCE THE NUMBER OF SERVICEMEN IN THE SAME MANNER AS IT HAD REDUCED THE OFFICE STAFF AND TO CLEAN HOUSE BY GETTING RID OF THOSE EMPLOYEES WITH WHOM IT HAD EXPERIENCED DIFFICULTY IN THE PAST. THE EMPLOYEES WERE NOT DISCHARGED FOR THEIR PREVIOUS WRONG DOINGS, BUT WERE DISMISSED BECAUSE OF THE COMPANY'S POOR ECONOMIC POSITION. THE COMPANY MERELY SELECTED FOR DISCHARGE THOSE PERSONS WHO HAD PREVIOUSLY CAUSED PROBLEMS FOR THE COMPANY.

4. THERE IS NO EVIDENCE BEFORE THE BOARD THAT THE COMPANY HAD ANY KNOWLEDGE OF THE UNION'S ATTEMPT TO ORGANIZE THE EMPLOYEES AND THERE WAS NO EVIDENCE THAT THE COMPANY HAD MADE ENQUIRIES WITH RESPECT TO SUCH MATTERS. ON THE CONTRARY, THE COMPLAINANT'S OWN EVIDENCE INDICATED THAT THE ORGANIZATIONAL MEETING WHICH IMMEDIATELY PRECEDED THE DISCHARGE WAS HELD IN A VERY SECRETIVE MANNER AND EVERY ATTEMPT WAS MADE TO CONCEAL THE ORGANIZATIONAL MEETING FROM MEMBERS OF MANAGEMENT.

5. WHILE CERTAIN SUSPICIONS AROSE AS A RESULT OF THE TIMING OF THE DISCHARGES, WE MUST FIND THAT THE COMPLAINANT HAS FAILED TO SATISFY THE ONUS ON IT THAT THE RESPONDENT HAD KNOWLEDGE OF THE EMPLOYEES UNION ACTIVITIES OR THAT THE EMPLOYEES WERE DISCHARGED BECAUSE OF THEIR SUPPORT FOR THE COMPLAINANT UNION.

6. THIS COMPLAINT IS THEREFORE DISMISSED.

659-71-JD: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (COMPLAINANT) v. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 18 AND JOHN E. SMITH & SON LATH, PLASTER & ACOUSTICAL CONTRACTORS (1968) LIMITED (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: M. G. HORAN, M. SACK AND H. MANCINELLI FOR THE COMPLAINANT; NO ONE APPEARED FOR THE RESPONDENT COMPANY; NO ONE APPEARED FOR THE RESPONDENT UNION.

DECISION OF THE BOARD: August 4, 1971.

1. THIS IS A COMPLAINT MADE UNDER SECTION 66 OF THE LABOUR RELATIONS ACT.

2. THE WORK IN DISPUTE BETWEEN THE COMPLAINANT TRADE UNION AND THE RESPONDENT TRADE UNION IS THE ERECTION OF TUBULAR METAL SCAFFOLDING EXTENDING TO A HEIGHT IN EXCESS OF 14 FEET, WHICH SCAFFOLDING IS BEING USED ON THE CANADA CENTRE FOR INLAND WATER - PHASE 2 CONSTRUCTION PROJECT AT BURLINGTON.

3. THE EVIDENCE OF JOHN SMITH, THE PRESIDENT OF THE RESPONDENT COMPANY, IS THAT IT HAS BEEN THE CONSISTENT PRACTICE OF HIS COMPANY OVER MANY YEARS TO ASSIGN THE WORK IN DISPUTE TO LABOURERS. IT APPEARS FROM THE EVIDENCE OF OTHER WITNESSES CALLED BY THE COMPLAINANT THAT IT HAS ALSO BEEN THE CONSISTENT PRACTICE OF THE PLASTERING CONTRACTORS WORKING IN THE BURLINGTON AND HAMILTON AREA, AND FOR THAT MATTER IN OTHER PARTS OF ONTARIO, TO USE LABOURERS TO DO THE WORK IN DISPUTE.

4. THE EVIDENCE FURTHER ESTABLISHES THAT THERE ARE NO CRAFT SKILLS REQUIRED TO DO THE WORK. INDEED NO TOOLS ARE REQUIRED. THE ENTIRE SCAFFOLDING IS ERECTED MANUALLY. PERSONS EXPERIENCED IN ERECTION WORK, HOWEVER, ARE NEEDED TO DO THE WORK EFFICIENTLY. THE RESPONDENT COMPANY HAS A CREW OF LABOURERS TRAINED ON THE JOB WHO ARE ABLE TO ERECT A SCAFFOLDING BOTH PROFICIENTLY AND TO PROVIDE A STRUCTURE SAFE FOR USE BY MEMBERS OF OTHER TRADES.

5. BASED ON THE PAST PRACTICE OF THE RESPONDENT COMPANY AND OTHER CONTRACTORS WORKING IN THE BURLINGTON-HAMILTON AREA, AND HAVING REGARD TO THE FACTORS OF SKILL, ECONOMY, EFFICIENCY AND SAFETY AND ALSO EMPLOYER PREFERENCE, THE BOARD FINDS THAT THE WORK IN DISPUTE WHICH IS THE SUBJECT MATTER OF THE INSTANT COMPLAINT FALLS WITHIN THE WORK JURISDICTIONS OF THE LABOURERS. WE WOULD MENTION THAT THE FINDING IS IN ACCORDANCE WITH THE DETERMINATIONS MADE BY THE BOARD IN TWO PREVIOUS COMPLAINTS MADE UNDER SECTION 66 OF THE ACT INVOLVING THE IDENTICAL WORK. IN THE EARLIER OF THE TWO CASES THE DISPUTED WORK WAS BEING DONE IN HAMILTON AND IN THE LATER CASE THE DISPUTED WORK WAS BEING DONE IN NORTH BAY. IN BOTH CASES THE COMPLAINANT WAS THE SAME COMPANY (SEE ABBE DICK MASONRY LIMITED (MAY 1, 1970))

BOARD FILE NUMBER 17161(A)-69-JD AND ABE DICK MASONRY LIMITED (MAY 21, 1971) BOARD FILE NUMBER 321-71-JD).

6. THE BOARD ACCORDINGLY DIRECTS THAT JOHN E. SMITH & SON LATH, PLASTER & ACOUSTICAL CONTRACTORS (1968) LIMITED SHALL ASSIGN THE WORK INVOLVED IN THE ERECTION OF TUBULAR SCAFFOLDING EXTENDING IN HEIGHT IN EXCESS OF 14 FEET, WHICH SCAFFOLDING IS BEING USED ON THE CANADA CENTRE FOR INLAND WATERS - PHASE 2 CONSTRUCTION PROJECT IN BURLINGTON TO EMPLOYEES WHO ARE REPRESENTED BY THE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837.

449-71-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V. COM-MODORE HOMES (RESPONDENT).

- AND -

483-71-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V. COM-MODORE HOMES (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS D. B. ARCHER AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARINGS: JEFFREY SACK AND JACK HORAN FOR THE COMPLAINANT; C. G. RIGGS, R. J. KONEFALL, N. D. HUDSON, E. DEVLIN, A. STONE AND J. WILKES FOR THE RESPONDENT.

DECISION OF THE BOARD: AUGUST 17, 1971.

1. THE BOARD DIRECTS THAT THE ABOVE APPLICATIONS BE AND THEY ARE HEREBY CONSOLIDATED.

2. THIS IS A COMPLAINT BROUGHT UNDER SECTION 65 OF THE ACT IN WHICH THE COMPLAINANT ALLEGES THAT WALTER JACKMIN, RICHARD MORRIS SINGLAR, JERRY LAMBKE, FRANK TAYLOR, DAVE BATEMAN, DENNIS JOSEPH KIDD, MIKE KIDD, JAMES BROWN, WALLACE SNIDER, WAYNE DAVIDSON, GAREY H. SIMPSON, GORDON HALL, REGINALD R. WHALEN, JANICE WILSON, CALVIN DICKS, LESLIE POLYAK, RAYMOND BRADBURY, ROBERT REID AND MARY ELLEN NEELY HAD BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT.

3. THE COMPLAINANT REQUESTS THAT THE ABOVE EMPLOYEES BE REINSTATED WITH FULL COMPENSATION FOR WAGES AND OTHER BENEFITS LOST, TOGETHER WITH INTEREST.

4. THE EMPLOYMENT OF THE ABOVE NAMED PERSONS WAS TERMINATED BY THE RESPONDENT ON MAY 13, 1971.

5. IT WAS THE CONTENTION OF THE RESPONDENT THAT A DROP IN THE

EFFICIENCY OF THE OPERATIONS DUE TO TOO RAPID AN EXPANSION OF THE WORK FORCE MADE IT NECESSARY TO CUT BACK THE NUMBER OF EMPLOYEES BY APPROXIMATELY 25%. THIS WAS TO ENABLE SUPERVISION TO PROPERLY TRAIN EMPLOYEES AND INTEGRATE THEM INTO THE PRODUCTION LINE. THE RESPONDENT STATED THAT THIS WAS THE SOLE REASON FOR THE TERMINATIONS. AT THE TIME OF THE HEARING OF THIS MATTER ALL THE ABOVE NAMED EMPLOYEES HAD EITHER RETURNED TO WORK OR HAD DECLINED THE RESPONDENT'S RECALL.

6. THE UNION, ON THE OTHER HAND, CONTENDED THAT THE TERMINATIONS COINCIDED WITH ITS ORGANIZATIONAL CAMPAIGN WHICH CAME TO HEAD ON MAY 14, 1971 WITH AN APPLICATION FOR CERTIFICATION AND WERE DIRECTED AT ITS MEMBERS. VIRTUALLY, ALL OF THE EMPLOYEES SELECTED FOR LAY-OFF WERE MEMBERS OF THE UNION WHICH THE UNION STATED REPRESENTS ABOUT 48% OF THE EMPLOYEES IN A PROPOSED BARGAINING UNIT OF APPROXIMATELY 100 EMPLOYEES.

7. THERE WAS CONSIDERABLE CONFLICT OF EVIDENCE AS TO WHETHER CERTAIN OF THE MANAGERIAL PERSONS HAD MADE INQUIRIES WITH RESPECT TO UNION ACTIVITY AND MEMBERSHIP OR HAD EXPRESSED ANTI-UNION FEELINGS.

8. ON THE BASIS OF ALL OF THE EVIDENCE AND HAVING IN MIND THE Demeanour OF THE WITNESSES AND THE MANNER IN WHICH THEY GAVE THEIR TESTIMONY WE FIND, EVEN ASSUMING BUT WITHOUT SO FINDING, THAT A CUT DOWN IN THE WORK FORCE WAS NECESSARY FOR LEGITIMATE BUSINESS REASONS, THAT THE SELECTION OF PERSONS TO BE LAID OFF WAS MADE CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT, AND THE COMPLAINANT IS ENTITLED TO THE RELIEF IT SEEKS FOR THE EMPLOYEES CONCERNED.

9. IN VIEW OF THE FACT THAT THE EMPLOYEES CONCERNED HAVE BEEN REEMPLOYED OR OFFERED REEMPLOYMENT BY THE RESPONDENT AND FURTHER, IN VIEW OF THE AGREEMENT OF THE PARTIES WITH RESPECT TO THE GRANTING OF DAMAGES, WE MAKE NO FURTHER DIRECTION AT THIS TIME.

420-71-U: CANADIAN TEXTILE AND CHEMICAL UNION (COMPLAINANT) v. INTERNATIONAL CHEMICAL WORKERS UNION; AND THOMAS E. BOYLE, INTERNATIONAL PRESIDENT; THOMAS SLOAN, INT. VICE PRESIDENT; R. W. STEWART, ASSISTANT CANADIAN DIRECTOR (RESPONDENTS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS J.D. BELL AND P.J. O'KEEFE.

APPEARANCES AT THE HEARING: R.K. ROWLEY AND E. CAUCHI FOR THE COMPLAINANT; M. INNIS, THOMAS SLOAN, ROBERT STEWART AND GORDON MCLIWAIN FOR THE RESPONDENTS.

DECISION OF THE BOARD: AUGUST 11, 1971.

1. THE ESSENCE OF THIS COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT IS THAT MR. EDWARD CAUCHI, THE AGGRIEVED, HAS BEEN REMOVED FROM OFFICE AS THE PRESIDENT OF LOCAL 346, INTERNATIONAL CHEMICAL WORKERS UNION (HEREINAFTER REFERRED TO AS LOCAL 346) BY THE RESPONDENTS. MR. CAUCHI COMPLAINS THAT THIS ACTION IS IN VIOLATION OF SECTION 3, 52 AND 59A OF THE LABOUR RELATIONS ACT.

2. COUNSEL FOR THE RESPONDENTS RAISED A PRELIMINARY OBJECTION TO THE BOARD ENTERTAINING THE COMPLAINT ON THE BASIS THAT THE MATTER AT HAND WAS A UNION MATTER AND THAT MR. CAUCHI SHOULD BE REQUIRED TO UTILIZE THE UNION'S INTERNAL PROCEDURES WHICH ARE INTENDED TO DEAL WITH THIS TYPE OF ISSUE. IN SUPPORT OF THE RESPONDENT'S POSITION HE CITED KUZYCK V. WHITE 1951 D.L.R. 641; 1951 A.C. 585. THAT CASE DECIDED THAT THE APPEAL MACHINERY WITHIN THE UNION SHOULD HAVE BEEN EXHAUSTED BEFORE PROCEEDING TO THE COURT.

3. THE REPRESENTATIVE FOR THE RESPONDENTS SUGGESTED THAT THE UNION'S PROCEDURES WERE NOT APPROPRIATE AND FURTHER THAT IF THERE WAS A VIOLATION OF THE LABOUR RELATIONS ACT THAT THE BOARD SHOULD ENTERTAIN THE APPLICATION.

4. WE RESERVED DECISION ON THE PRELIMINARY ISSUE AND HEARD EVIDENCE DIRECTED TO THE MERITS OF THE CASE. WE PROPOSE TO DECIDE THIS CASE ON THE MERITS. HOWEVER, WE WISH TO COMMENT BRIEFLY ON THE PRELIMINARY ISSUE RAISED BECAUSE IN OUR VIEW THE ISSUE IS TO BE RESOLVED ON A DIFFERENT BASIS FROM THAT OF THE COURTS. THE SUBJECT MATTER BEFORE THE COURTS IS VERY EXTENSIVE AND COVERS A WIDE RANGE OF MATTERS. INITIALLY, WE NOTED THAT THE COURTS HAVE TAKEN JURISDICTION IN A NUMBER OF INSTANCES. SEE CARROTHERS, COLLECTIVE BARGAINING LAW IN CANADA, PAGES 527 TO 541. ISSUES OF COLLECTIVE BARGAINING OR LABOUR RELATIONS ARE ONLY A SMALL PART OF THE COURTS BROAD AND GENERAL JURISDICTION. THIS BOARD HOWEVER, HAS BEEN SPECIFICALLY DESIGNATED BY THE LEGISLATURE TO ENTERTAIN CERTAIN ISSUES CENTRAL TO COLLECTIVE BARGAINING AND THOSE ISSUES WHICH FIND EXPRESSION IN THE LABOUR RELATIONS ACT WHILE PERMITTING MATTERS OF INTERNAL TRADE UNION CONCERN ARE ALSO MATTERS OF PUBLIC POLICY WITH THE EXPECTATION BY THE LEGISLATURE THAT THIS TRIBUNAL IS THE MORE APPROPRIATE FORUM TO ADJUDICATE UPON THOSE ISSUES. WE ARE NOT PREPARED TO ACCEDE TO THE "CONTRACT THEORY", WHICH INDICATES THAT MEMBERS OF A TRADE UNION MAY HAVE CONTRACTED TO EXHAUST THEIR RIGHTS WITHIN THE INTERNAL TRADE UNION MACHINERY BEFORE RESORTING TO THIS BOARD WHERE THE ISSUE PRIMA FACIE INDICATES A VIOLATION OF PUBLIC POLICY.

5. IN ARRIVING AT OUR CONCLUSION WE ARE NOT PREPARED TO SHUT THE DOOR COMPLETELY ON THE VIEW THAT MEMBERS OF A TRADE UNION MAY BE REQUIRED TO EXHAUST THEIR INTERNAL TRADE UNION MACHINERY BEFORE COMING TO THIS BOARD, NOR ARE WE PREPARED TO NOW DEFINE WHICH MATTERS

WE MAY LEAVE TO THE INTERNAL UNION PROCEDURES. BUT, AT THE VERY LEAST, WHERE A TRADE UNION REQUESTS THIS BOARD TO PERMIT RESORT TO INTERNAL UNION PROCEDURES IT MUST PROVIDE SOME ASSURANCE THAT IT POSSESSES THE MACHINERY NECESSARY TO PROVIDE "DUE PROCESS" AND "NATURAL JUSTICE" TO THE PERSONS CONCERNED. THAT, TOO, IS A MATTER OF PUBLIC POLICY. IN LEE V. SHOWMEN'S GUILD OF GREAT BRITAIN 1952 111 E.R. P. 1175 AT 1180 DENNING L.J. STATED:

"ALTHOUGH THE JURISDICTION OF A DOMESTIC TRIBUNAL IS FOUNDED ON CONTRACT, EXPRESS OR IMPLIED, NEVERTHELESS THE PARTIES ARE NOT FREE TO MAKE ANY CONTRACT THEY LIKE. THERE ARE IMPORTANT LIMITATIONS IMPOSED BY PUBLIC POLICY. THE TRIBUNAL MUST, FOR INSTANCE, OBSERVE THE PRINCIPLES OF NATURAL JUSTICE. THEY MUST GIVE THE MAN NOTICE OF THE CHARGE AND A REASONABLE OPPORTUNITY OF MEETING IT. ANY STIPULATION TO THE CONTRARY WOULD BE INVALID. THEY CANNOT STIPULATE FOR A POWER TO CONDEMN A MAN UNHEARD."

6. WE NOW TURN TO THE MERITS OF THIS CASE. IT IS CLEAR FROM THE EVIDENCE THAT MR. CAUCHI WHILE HE WAS AN OFFICER OF LOCAL 346 ENGAGED IN ACTIVITY WHICH WAS CONTRARY TO THE INTERESTS OF LOCAL 346. HE WAS REMOVED FROM OFFICE BECAUSE HE SIGNED UP EMPLOYEES IN THE BARGAINING UNIT AS MEMBERS IN A RIVAL UNION, BECAUSE HE INITIATED DISCUSSIONS WITH A RIVAL UNION TO RAID LOCAL 346, BECAUSE HE AS AN OFFICER OF LOCAL 346 REFRAINED FROM TAKING ACTION TO COMBAT THE RAID AND BECAUSE HE CONDUCTED HIMSELF IN OTHER RESPECTS TO THE DETRIMENT OF THE UNION.

7. IN OUR VIEW THE CONDUCT OF THE RESPONDENTS WAS CLEARLY PERMISSIBLE. THE UNDERTAKING OF A UNION OFFICER IMPOSES A DUTY AND OBLIGATION ON THE PART OF THE OFFICER TO FURTHER THE INTERESTS OF HIS UNION. HE IS IN A POSITION OF RESPONSIBILITY AND TRUST AND THE UNION IS ENTITLED TO EXPECT FIDELITY FROM SUCH OFFICER. IT IS VERY DIFFICULT FOR MR. CAUCHI WHOSE ACTIVITIES INVOLVED HIM IN A DIRECT CONFLICT OF INTEREST WITH HIS DUTIES AND RESPONSIBILITIES AS A UNION OFFICER TO NOW COMPLAIN THAT HE WAS REMOVED FROM OFFICE. SUCH REMOVAL DOES NOT CONSTITUTE A VIOLATION OF ANY OF THE PROVISIONS OF THE ACT.

8. THE RESPONDENTS HAVE NOT REMOVED MR. CAUCHI FROM OFFICE IN VIOLATION OF THE LABOUR RELATIONS ACT OR FOR ANY ACTIVITY PROTECTED BY THE ACT. THE COMPLAINANT HAS FAILED TO DISTINGUISH REMOVAL FROM OFFICE FOR ACTING CONTRARY TO THE INTERESTS OF THE UNION FROM REMOVAL FROM OFFICE IN VIOLATION OF THE ACT. MR. CAUCHI WAS NOT INTIMIDATED OR COERCED PURSUANT TO SECTION 52 OF THE ACT NOR WAS HE REMOVED FOR ANY REASON THAT WOULD VIOLATE SECTION 59(2), NOR HAS HIS FREEDOM TO

JOIN A TRADE UNION OF HIS OWN CHOICE UNDER SECTION 3 BEEN VIOLATED. HE IS STILL FREE TO JOIN SUCH OTHER TRADE UNION AS HE WISHES, NOR MAY HE BE DISCHARGED FOR SUCH ACTIVITY. THE CONDUCT OF THE UNION IS A SIMPLE EXPRESSION OF OPINION BY THE RESPONDENTS THAT MR. CAUCHI WHILE ENGAGING IN SUCH ACTIVITY DOES NOT SERVE THE BEST INTERESTS OF LOCAL 346 AND ACCORDINGLY SHOULD NOT HOLD THE POSITION OF AN OFFICER OF THAT LOCAL.

9. WHILE THERE WAS SOME ALLEGATION WITH RESPECT TO THE IMPOSITION OF SUPERVISION AND RECEIVERSHIP OVER LOCAL 346 IT APPEARED THAT SUCH SUPERVISION AND RECEIVERSHIP HAD BEEN REMOVED PRIOR TO THIS HEARING AND SINCE THERE IS REALLY NO DISPUTE BETWEEN THE PARTIES CONCERNING THAT MATTER IT WILL NOT BE NECESSARY FOR US TO DEAL WITH IT FOR THE REASONS GIVEN.

10. IN ALL THE CIRCUMSTANCES THE COMPLAINT IS DISMISSED.

745-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. TIMMINS AMBULANCE SERVICE - OWNED AND OPERATED BY MR. YVON BOUCHER (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND F. W. MURRAY.

APPEARANCES AT THE HEARING: W. A. ACTON FOR THE APPLICANT, GILLES RACICOT FOR THE RESPONDENT.

DECISION OF THE BOARD: AUGUST 11, 1971.

1. THE NAME "TIMMINS AMBULANCE SERVICE" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "TIMMINS AMBULANCE SERVICE - OWNED AND OPERATED BY MR. YVON BOUCHER".

2. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE RESPONDENT CHALLENGED THE APPLICANT'S STATUS TO REPRESENT THE RESPONDENT'S EMPLOYEES. THE RESPONDENT IS A SOLE PROPRIETORSHIP WHICH OPERATES AN AMBULANCE SERVICE IN TIMMINS. THE RESPONDENT IS NOT A GOVERNMENTAL BODY, PUBLIC UTILITY, COMMISSION, HOSPITAL OR SOCIAL OR WELFARE AGENCY. THE EMPLOYEES OF THE RESPONDENT ACCORDINGLY CANNOT BE CHARACTERIZED AS PUBLIC EMPLOYEES. THE RESPONDENT THEREFORE ARGUED THAT THE APPLICANT UNION IS NOT AN APPROPRIATE UNION TO REPRESENT THE RESPONDENT'S EMPLOYEES.

3. THE RELEVANT PROVISIONS OF THE APPLICANT'S CONSTITUTION READ AS FOLLOWS:

ARTICLE III JURISDICTION AND MEMBERSHIP

3.1 ANY GROUP OF THE FOLLOWING EMPLOYEES SHALL BE ELIGIBLE FOR MEMBERSHIP AS A CHARTERED LOCAL UNION:

EMPLOYEES OF ANY FEDERAL, PROVINCIAL OR MUNICIPAL GOVERNMENT OR LOCAL AUTHORITY OR ANY SUBDIVISION THEREOF.

EMPLOYEES OF ANY PUBLIC BOARD OR COMMISSION ESTABLISHED BY OR RELATED TO THE MUNICIPAL AUTHORITY.

EMPLOYEES OF ANY PUBLIC BOARD, COMMISSION OR AUTHORITY OF THE FEDERAL OR ANY PROVINCIAL GOVERNMENT.

EMPLOYEES OF ANY HOSPITAL, SOCIAL OR WELFARE AGENCY ESTABLISHED TO SERVE A COMMUNITY.

EMPLOYEES OF ANY PUBLIC UTILITY WHOSE CHARGES OR RATES TO THE PUBLIC COME UNDER THE SUPERVISION OF A GOVERNMENTAL BODY OR AGENCY.

THE CANADIAN UNION OF PUBLIC EMPLOYEES MAY ISSUE CHARTERS TO ALL GROUPS ELIGIBLE FOR MEMBERSHIP AS A CHARTERED LOCAL UNION.

THE CANADIAN UNION MAY ISSUE CHARTERS AND ACCEPT INTO MEMBERSHIP IN GOOD STANDING ALL EMPLOYEE GROUPS THAT SO WISH IN CASES WHERE THESE GROUPS OF EMPLOYEES ARE RECOGNIZED UNDER EXISTING LABOUR LEGISLATION.

4. THE APPLICANT'S REPRESENTATIVE AT THE HEARING ASSERTED THAT IT WAS THE APPLICANT'S REGULAR PRACTICE TO REPRESENT EMPLOYEES IN PRIVATE INDUSTRY WHO WERE NOT PUBLIC EMPLOYEES. HOWEVER, THE APPLICANT CALLED NO EVIDENCE TO ESTABLISH THIS PRACTICE.

5. IT IS CLEAR THAT IF THE APPLICANT HAS THE NECESSARY CONSTITUTIONAL AUTHORITY TO TAKE THE RESPONDENT'S EMPLOYEES INTO MEMBERSHIP THAT AUTHORITY IS ONLY FOUND IN THE CONCLUDING PARAGRAPH OF ARTICLE 3.1 OF THE APPLICANT'S CONSTITUTION SINCE NONE OF THE PRECEDING PARAGRAPHS DESCRIBE OR REFER TO THE EMPLOYEES OF THE RESPONDENT. IT IS

EQUALLY CLEAR, HOWEVER, THAT THE APPLICANT'S CONSTITUTION DOES NOT SPECIFICALLY EXCLUDE THE RESPONDENT'S EMPLOYEES FROM MEMBERSHIP.

6. HAVING CONSIDERED THE INTENT OF THE CONCLUDING PARAGRAPH OF ARTICLE 3.1 OF THE APPLICANT'S CONSTITUTION AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, WE ARE OF OPINION THAT THIS PARAGRAPH IS INTENDED TO BE IN THE NATURE OF AN OMNIBUS MEMBERSHIP CLAUSE. WHILE IT MAY BE THAT THE CLARITY OF THE CLAUSE LEAVES MUCH TO BE DESIRED, ESPECIALLY THE CONCLUDING PHRASE THEREOF, OUR INTERPRETATION OF THAT CLAUSE AS IT APPLIES TO MEMBERSHIP IN THE APPLICANT IS AS FOLLOWS. THE APPLICANT MAY ACCEPT INTO MEMBERSHIP IN GOOD STANDING ALL EMPLOYEE GROUPS THAT SO WISH IN CASES WHERE THESE GROUPS OF EMPLOYEES FORM APPROPRIATE BARGAINING UNITS UNDER THE LABOUR RELATIONS ACT.

7. SINCE THE EMPLOYEES OF THE RESPONDENT WITH WHOM WE ARE HERE CONCERNED FORM AN APPROPRIATE BARGAINING UNIT UNDER THE ACT AND SINCE THE MAJORITY OF THE GROUP HAVE, BY THEIR APPLICATIONS FOR MEMBERSHIP, INDICATED THEIR WISH TO BECOME MEMBERS IN GOOD STANDING, WE ACCORDINGLY FIND THAT THE CONCLUDING CLAUSE OF ARTICLE 3.1 GIVES THE APPLICANT THE NECESSARY AUTHORITY AND JURISDICTION TO TAKE THE GROUP OF EMPLOYEES INTO MEMBERSHIP ALBEIT THEY ARE NOT PUBLIC EMPLOYEES. SEE ALSO TAYLOR INSTRUMENT COMPANIES OF CANADA LIMITED CASE, OLRB MONTHLY REPORT, NOVEMBER 1968, P. 823.

. . .

9. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT TIMMINS, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

. . .

11. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

527-71-R: CLIVE R. DYKER (APPLICANT) V. RETAIL CLERKS INTERNATIONAL ASSOCIATION LOCAL 206 (RESPONDENT).

(RE: EAST MALL I.G.A.).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS P. J. O'KEEFFE AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: CLIVE R. DYKER AND D. R. DOWNARD FOR THE APPLICANT; CLIFFORD EVANS FOR THE RESPONDENT.

DECISION OF THE BOARD:

AUGUST 11, 1971.

1. THIS IS AN APPLICATION FOR A DECLARATION TERMINATING BARGAINING RIGHTS UNDER SECTION 43 OF THE LABOUR RELATIONS ACT.
2. THE RESPONDENT SUBMITTED THAT THE APPLICATION IS INVALID BECAUSE THE APPLICANT IS NOT A MEMBER OF THE BARGAINING UNIT CONCERNED AS IS REQUIRED BY SECTION 43 OF THE ACT.
3. THE FORMAL APPLICATION IS SIGNED BY CLIVE RICHARD DYKER AND SHOWS HIM AS THE APPLICANT IN THE STYLE OF CAUSE. THE EVIDENCE IS THAT HE IS A MEMBER OF A BARGAINING UNIT OF FULL TIME EMPLOYEES OF THE EAST MALL I.G.A., WHEREAS THE APPLICATION HAS TO DO WITH A BARGAINING UNIT OF PART TIME EMPLOYEES OF THAT EMPLOYER.
4. THE PETITION IN SUPPORT OF THE APPLICATION STATES "WE THE UNDERSIGNED PART TIME EMPLOYEES OF EAST MALL IGA 15 WEST DEANE PARK DRIVE ISLINGTON ONTARIO NO LONGER WISH TO BE REPRESENTED BY THE RETAIL CLERKS UNION ASSOCIATION LOCAL 206 GUELPH ONTARIO".
5. SECTION 43 OF THE ACT STATES THAT UNDER DIFFERENT CIRCUMSTANCES AS THEREIN SET OUT, ANY OF THE EMPLOYEES IN THE BARGAINING UNIT MAY APPLY FOR A DECLARATION. IN THE CIRCUMSTANCES OF THE PRESENT CASE, THEREFORE, WE FIND THAT SINCE THE APPLICANT IS NOT A MEMBER OF THE BARGAINING UNIT HE IS NOT ENTITLED TO BRING AN APPLICATION UNDER SECTION 43 OF THE ACT.
6. THIS CASE IS DISTINGUISHABLE FROM THE DOMINION STORES LIMITED CASE, BOARD FILE NO. 18379-70-R, WHERE THE APPLICATION WAS STYLED "R. FORGET AND A GROUP OF EMPLOYEES". IN THAT CASE, FORGET WAS NOT A MEMBER OF THE BARGAINING UNIT. THE BOARD STATED IN THAT CASE THAT THE APPLICANT COMPRISED FORGET AND "A GROUP OF EMPLOYEES" AS INDICATED IN THE STYLE OF CAUSE IN THE FORMAL APPLICATION. IT WENT ON TO SAY THAT REGARDLESS OF FORGET'S STATUS AS AN APPLICANT "THE EMPLOYEES WHO IDENTIFY THEMSELVES AS SUCH ON THE STATEMENT ACCOMPANYING FOR FORMAL APPLICATION ARE PRIMA FACIE ENTITLED TO BRING THE APPLICATION".
7. IN THE PRESENT INSTANCE, NO "GROUP OF EMPLOYEES" APPEAR ON THE STYLE OF CAUSE OF THE APPLICATION. THE PETITION IS NOT AN APPLICATION FOR TERMINATION. THE DISTINCTION MAY APPEAR NARROW, BUT WE BELIEVE IT TO BE PROPER IN VIEW OF THE LANGUAGE OF SECTION 43 OF THE ACT.
8. THE APPLICATION IS ACCORDINGLY DISMISSED.

DECISION OF BOARD MEMBER J.E.C. ROBINSON Q.C. AUGUST 11, 1971.

THIS IS AN APPLICATION FOR A DECLARATION TERMINATING BARGAINING RIGHTS UNDER SECTION 43 OF THE LABOUR RELATIONS ACT.

THE FORMAL APPLICATION FORM IS SIGNED BY CLIVE R. DYKER WHO IS A FULL-TIME EMPLOYEE OF THE COMPANY. THE UNIT WITH WHICH WE ARE HERE CONCERNED IS THE PART-TIME UNIT.

WHILE THE APPLICATION IS SIGNED BY DYKER, THE PETITION IN SUPPORT OF THE APPLICATION STATED AS FOLLOWS:

"WE THE UNDERSIGNED PART TIME EMPLOYEES OF EAST MALL IGA, 15 WEST DEANE PARK DRIVE ISLINGTON ONTARIO NO LONGER WISH TO BE REPRESENTED BY THE RETAIL CLERKS UNION ASSOCIATION LOCAL 206 GUELPH ONTARIO"

THERE THEN FOLLOWS THE SIGNATURES OF SIX PERSONS WHO PURPORT TO BE PART-TIME EMPLOYEES OF THE COMPANY.

AFTER THE SIGNATURES IS THE STATEMENT:

"DATED THIS 1ST DAY OF JUNE 1971
REPRESENTED BY

CLIVE R. DYKER"

IN R. FORGET AND A GROUP OF EMPLOYEES AND RETAIL CLERKS UNION, LOCAL 486 AND DOMINION STORES LIMITED, BOARD FILE NO. 18379-70-R, ANOTHER APPLICATION UNDER SECTION 43 OF THE LABOUR RELATIONS ACT, THE BOARD STATED, INTER ALIA

"MR. FORGET WHO SIGNED THE FORMAL APPLICATION AND WHO PRESENTED THE WRITTEN STATEMENT FILED IN SUPPORT OF THE REQUEST IS NOT A MEMBER OF THE BARGAINING UNIT WITH WHICH WE ARE HERE CONCERNED. HE IS A MEMBER OF ANOTHER UNIT OF EMPLOYEES OF THE INTERVENER (COMPANY) KNOWN AS THE 'FULL TIME UNIT'. COUNSEL FOR THE RESPONDENT (UNION) ARGUED THAT THAT BEING THE CASE, FORGET IS NOT COMPETENT TO BRING THE APPLICATION AND THE SAME OUGHT TO BE DISMISSED SINCE SECTION 43 OF THE ACT PROVIDES THAT AN APPLICATION MAY ONLY BE BROUGHT BY 'ANY OF THE EMPLOYEES IN THE BARGAINING UNIT'.

..... IN OUR OPINION, WHATEVER MAY BE SAID OF FORGET'S STATUS AS AN APPLICANT, THE EMPLOYEES WHO IDENTIFY THEMSELVES AS SUCH ON

THE STATEMENT ACCOMPANYING THE FORMAL APPLICATION ARE PRIMA FACIE ENTITLED TO BRING THE APPLICATION AND ARE ENTITLED TO EMPLOY FORGET AS THEIR REPRESENTATIVE AS INDICATED IN THE COVERING LETTER AND FORGET'S TESTIMONY."

THE ONLY POSSIBLE DISTINCTION BETWEEN THE TWO CASES WOULD SEEM TO BE THAT IN THE FORGET CASE, FORGET ADDED TO HIS OWN NAME IN THE FORMAL APPLICATION THE WORDS "AND A GROUP OF EMPLOYEES".

HOWEVER, IT IS CLEAR FROM THE DOCUMENT ACCOMPANYING THE FORMAL APPLICATION IN THE DYKER CASE, THAT DYKER WAS MERELY ACTING IN A REPRESENTATIVE CAPACITY ON BEHALF OF THE PART TIME EMPLOYEES.

THE DISTINCTION BETWEEN THE TWO CASES, IN MY OPINION, IS FAR TOO SUBTLE FOR ME TO FIND IT OF SIGNIFICANCE.

ACCORDINGLY, I WOULD HAVE ALLOWED THE APPLICATION.

106-70-JD: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 607 (COMPLAINANT) V. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 628 AND CANADIAN INTERNATIONAL COMSTOCK COMPANY LIMITED (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: A. M. MINSKY, J. A. MCCUTCHEON AND MICHAEL REILLY FOR THE COMPLAINANT; LAURENCE C. ARNOLD AND GEORGE ME-SERVIER FOR THE RESPONDENT UNION; D. E. HARMESON, H. G. SYMONDS AND W. KLANN FOR THE RESPONDENT COMPANY.

DECISION OF THE BOARD: AUGUST 17, 1971.

1. THE NAME "CANADIAN INTERNATIONAL COMSTOCK COMPANY LTD." APPEARING IN THE STYLE OF CAUSE OF THIS COMPLAINT AS THE NAME OF THE RESPONDENT COMPANY IS AMENDED TO READ: "CANADIAN INTERNATIONAL COMSTOCK COMPANY LIMITED".

2. THIS IS A COMPLAINT MADE UNDER SECTION 66 OF THE LABOUR RELATIONS ACT.

3. THE COMPLAINANT (HEREINAFTER REFERRED TO AS THE LABOURERS) IS REQUESTING THAT THE BOARD MAKE A DIRECTION WITH RESPECT TO A WORK

ASSIGNMENT MADE BY THE RESPONDENT COMPANY (HEREINAFTER REFERRED TO AS COMSTOCK) WHICH IS THE SUBJECT MATTER OF A DISPUTE BETWEEN THE LABOURERS AND THE RESPONDENT TRADE UNION (HEREINAFTER REFERRED TO AS THE PIPEFITTERS).

4. THE WORK IN DISPUTE IS THE INSTALLATION OF FRP PIPE, WHICH IS A PIPE MADE OF FIBER GLASS, BEING USED IN AN EFFLUENT DISPOSAL SYSTEM BUILT BY COMSTOCK IN CONNECTION WITH A PULP MILL PROJECT FOR THE ONTARIO-MINNESOTA PULP AND PAPER COMPANY LIMITED (HEREINAFTER REFERRED TO AS ONTARIO-MINNESOTA) AT FORT FRANCES. COMSTOCK, THE GENERAL CONTRACTOR ON THE PROJECT, ASSIGNED THE INSTALLATION WORK, WHICH INVOLVES THE HANDLING, LAYING AND JOINING OF THE FRP PIPE, TO THE PIPEFITTERS. THE LABOURERS AND THE PIPEFITTERS BOTH CLAIM THAT THE INSTALLATION OF THE PIPING FALLS WITHIN THEIR RESPECTIVE WORK JURISDICTIONS.

5. ONTARIO-MINNESOTA CONTRACTED WITH NORTHWEST INDUSTRIES LIMITED, WHICH COMPANY IS BASED IN EDMONTON, ALBERTA, TO SUPPLY THE FRP PIPE TO BUILD THE EFFLUENT DISPOSAL SYSTEM. THE COMPOSITION OF THE FRP PIPE IS SUCH THAT IT IS ABLE TO WITHSTAND THE CORROSIVE EFFECTS OF CHEMICAL WASTE. IN ORDER FOR THE EFFLUENT DISPOSAL SYSTEM TO OPERATE PROPERLY, IT IS ESSENTIAL THAT THE SYSTEM BE "LEAK-PROOF". ACCORDINGLY, THE "AIR-TIGHT" JOINING OF THE LENGTHS OF FRP PIPING IS OF PARAMOUNT IMPORTANCE.

6. NORTHWEST INDUSTRIES LIMITED OFFERED A FIVE-YEAR GUARANTEE ON THE EFFLUENT DISPOSAL SYSTEM CONSTRUCTED OF FRP PIPE PROVIDED THAT THE JOINING OF THE PIPE WAS SUPERVISED, INSPECTED AND APPROVED BY A REPRESENTATIVE OF NORTHWEST INDUSTRIES LIMITED. JOHN WENGRENIUK, WHO IS EMPLOYED IN THE FIBER GLASS DIVISION OF NORTHWEST INDUSTRIES LIMITED, WAS PUT ON THE PAYROLL OF COMSTOCK AND WAS THE PERSON RESPONSIBLE FOR SUPERVISING AND INSPECTING THE JOINTS MADE IN THE FRP PIPING. WENGRENIUK ACTED IN THIS CAPACITY DURING THE FIVE-MONTH PERIOD DURING THE PAST WINTER AND SPRING WHEN THE EFFLUENT SYSTEM WAS BEING INSTALLED.

7. THE SYSTEM IS DESIGNED TO REMOVE THE CHEMICAL WASTE PRODUCED FROM THE OPERATION OF THE PULP MILL OF ONTARIO-MINNESOTA AT FORT FRANCES. THE CHEMICAL WASTE IS CARRIED THROUGH FRP PIPING FROM THE MILL TO A PUMPING STATION OUTSIDE THE MILL. FROM THAT POINT THE WASTE IS PUMPED UNDER PRESSURE THROUGH THE PIPING TO A MAN-MADE LAAGOON. BY A PROCESS THAT NEED NOT BE DESCRIBED HERE, THE CHEMICAL WASTE IS REMOVED. THE PURIFIED WATER IS THEN CARRIED TO RAINY RIVER BY A GRAVITATIONAL LINE MADE OF FRP PIPING. THE PURIFIED WATER IS EMPTIED INTO THE RIVER WHICH IS SOME DISTANCE FROM THE MILL.

8. IN THE ACTUAL CONSTRUCTION OF THE PIPELINES FOR THE DISPOSAL SYSTEM, THE FRP PIPE IS BROUGHT ON TO THE SITE BY TRUCK. RIGGING

EQUIPMENT WITH ATTACHED SLINGS ARE USED TO LOWER THE PIPE INTO THE TRENCHES IN A LINE WITH THE PIPES ABUTTING ONE ANOTHER. THE PIPES ARE JOINED TOGETHER IN THE TRENCH WITH A FIBER GLASS MATTING COATED WITH A RESIN SOLUTION WHICH IS WRAPPED AROUND THE AREA OF THE JOINT. STEEL ROLLERS ARE USED FOR THE WRAPPING PROCESS. AFTER THE RESIN SOLUTION ON THE WRAPPED MATTING HAS HARDENED AND THE JOINTS ARE TESTED TO ENSURE THAT THEY HAVE AN AIR-TIGHT SEAL, THE TRENCH IS BACK-FILLED WITH SAND AND EARTH AND IS COMPACTED.

9. ON THE ONTARIO-MINNESOTA PROJECT, OPERATING ENGINEERS RAN THE RIGGING EQUIPMENT USED TO UNLOAD THE PIPE AND THE BACK HOES AND SHOVELS USED TO EXCAVATE THE TRENCHES. LABOURERS LAID A BEDDING OF SAND AND GRAVEL IN THE TRENCHES AND DID THE REQUIRED SHORING AND HOARDING WORK IN THE TRENCHES. LABOURERS ALSO BACKFILLED THE TRENCHES ONCE THE PIPE WAS LAID AND COMPACTED THE EARTH AND SAND ON TOP. IN COLD WEATHER, LABOURERS LOOKED AFTER THE HEATERS USED TO MAINTAIN THE PIPES AT THE TEMPERATURE REQUIRED TO MAKE THE JOINTS. THE PIPEFITTERS ATTACHED THE SLINGS ON THE RIGGING EQUIPMENT TO THE PIPES AND DID ALL OF THE OTHER WORK CONNECTED WITH THE UNLOADING AND PLACING OF THE PIPE IN THE TRENCHES. PIPEFITTERS MITRED, CUT AND JOINED THE PIPING. THEY ALSO INSTALLED VALVES AND OTHER MECHANICAL PARTS SPECIFIED FOR THE DISPOSAL SYSTEM.

10. WITNESSES CALLED BY THE LABOURERS TESTIFIED THAT ONLY A SMALL AMOUNT OF MITRING AND CUTTING OF THE FRP PIPE HAD TO BE DONE ON THE SITE. THEY FURTHER CLAIMED THAT MITRING WAS DONE ON A TRIAL AND ERROR BASIS AND THAT ANY SKILLS INVOLVED WERE EASILY ACQUIRED ON THE JOB. THE EVIDENCE OF THE SAME WITNESSES IS THAT LABOURERS COULD ALSO READILY LEARN THE SKILLS REQUIRED TO PROFICIENTLY JOIN TOGETHER FRP PIPING. WITNESSES CALLED BY THE PIPEFITTERS, ON THE OTHER HAND, TESTIFIED THAT IT WAS NECESSARY TO DO EXTENSIVE MITRING AND CUTTING OF THE FRP PIPE ON THE SITE AND THAT EXACT CALCULATIONS OF THE REQUIRED ANGLES HAD TO BE MADE BEFORE THE ACTUAL MITRING WAS DONE. THEIR TESTIMONY IS THAT THE PIPEFITTERS WERE TRAINED AND ABLE TO MAKE THESE NECESSARY CALCULATIONS, WHEREAS SOMEONE ELSE (I.E. THE SUPERVISOR OR ENGINEER) WOULD HAVE TO MAKE SUCH CALCULATIONS FOR LABOURERS. FURTHER, THE EVIDENCE OF THE WITNESSES CALLED BY THE PIPEFITTERS WAS THAT THE JOINING OF THE FRP PIPE WAS AN OPERATION WHICH REQUIRED A HIGH DEGREE OF SKILL, TRAINING, EXPERIENCE AND JUDGMENT. ACCORDING TO THEIR EVIDENCE, THE BELL AND SPIGOT AND OTHER TYPES OF "PUSH-ON" DEVICES USED TO JOIN THE REGULAR TYPES OF SEWER AND WATER-MAIN PIPING, COMPARTIVELY SPEAKING, WERE EASY TO INSTALL AND REQUIRED LITTLE SKILL.

11. WE ARE SATISFIED THAT THE WITNESSES CALLED BY THE PIPEFITTERS HAVE GREATER PRACTICAL KNOWLEDGE AND EXPERIENCE IN THE HANDLING, LAYING AND JOINING OF FRP PIPES. FOR THIS REASON, WE PREFER AND AC-

CEPT THEIR EVIDENCE OVER THE EVIDENCE OF THE WITNESSES CALLED BY THE LABOURERS. UNDOUBTEDLY, LABOURERS ARE AS ABLE TO UNLOAD AND LAY PIPE AS PIPEFITTERS. IT WOULD TAKE A CONSIDERABLY LONGER PERIOD OF TIME, HOWEVER, TO TRAIN LABOURERS TO ACCURATELY MITRE AND EFFICIENTLY JOIN THE FRP PIPING. EVEN ASSUMING THAT LABOURERS COULD BE QUICKLY TRAINED TO DO THIS TYPE OF WORK, THEY WOULD REQUIRE CONSIDERABLY MORE SUPERVISION THAN PIPEFITTERS.

12. THERE WAS SOME CONFLICT IN THE EVIDENCE AS TO THE DIFFICULTIES INVOLVED IN SCHEDULING THE WORK IN DISPUTE WHEN THERE ARE BOTH LABOURER AND PIPEFITTER CREWS ON THE JOB. WE ARE SATISFIED THAT WITH CAREFUL PLANNING SERIOUS SCHEDULING PROBLEMS ARE AVOIDABLE.

13. IT IS OUR CONCLUSION BASED ON ALL OF THE EVIDENCE THAT PIPEFITTERS, BECAUSE OF THEIR TRAINING AND SKILLS, ARE BETTER QUALIFIED TO DO THE WORK IN DISPUTE AND MORE PARTICULARLY THE MITRING AND JOINING OF THE FRP PIPING THAN ARE LABOURERS.

14. THERE WAS FILED WITH THE BOARD A MEMORANDUM OF UNDERSTANDING DATED JANUARY 23, 1941, SIGNED BY THE GENERAL PRESIDENT OF THE LABOURERS AND PIPEFITTERS UNIONS RELATING TO THE JURISDICTION OF THE TWO TRADES OVER ALL WORK INVOLVED IN THE LAYING OF NON-METALLIC PIPE. ALMOST SINCE IT WAS SIGNED THERE HAVE BEEN DISPUTES AS TO ITS INTERPRETATION AND APPLICATION. NO USEFUL PURPOSE WOULD BE SERVED BY OUTLINING THE NATURE OF THE DISPUTES OVER THE MEMORANDUM AS NO EFFORT HAS BEEN MADE BY EITHER TRADE TO ENFORCE IT IN NORTHWESTERN ONTARIO. RECOMMENDATIONS WERE MADE TO THE GENERAL PRESIDENTS BY REPRESENTATIVES OF THE TWO DISPUTING UNIONS IN 1966 WITH RESPECT TO THE LAYING OF PIPE. THE RECOMMENDATIONS, WHICH WERE DESIGNED TO COVER ALL OF ONTARIO, WERE REJECTED BY THE GENERAL PRESIDENT OF THE PIPEFITTERS UNION. IN ANY EVENT, THE RECOMMENDATIONS HAVE NOT BEEN APPLIED IN THE GEOGRAPHIC AREA WITH WHICH WE ARE HERE CONCERNED. ACCORDINGLY, THERE ARE NO AGREEMENTS ON FILE WHICH ASSIST THE JURISDICTIONAL CLAIM OF EITHER THE LABOURERS OR THE PIPEFITTERS.

15. THE EVIDENCE OF JOHN WENGRENIUK IS THAT HE HAS INSTALLED AND SUPERVISED THE INSTALLATION OF FRP PIPE MANUFACTURED BY NORTHWEST INDUSTRIES LIMITED IN THE 1960'S FOR EFFLUENT DISPOSAL SYSTEMS IN CONNECTION WITH A PULP MILL PROJECT IN NOVA SCOTIA AND THREE SIMILAR PROJECTS IN THE UNITED STATES. IN ALL CASES THE INSTALLATION OF THE FRP PIPE WAS DONE BY PIPEFITTERS. WE WOULD MENTION THAT ON ONE OF THE AMERICAN PROJECTS, WHICH WAS FOR THE INTERNATIONAL PAPER COMPANY AT TICONDEROGA, NEW YORK, THE GENERAL CONTRACTOR ORIGINALLY ASSIGNED THE INSTALLATION OF THE FRP PIPE TO LABOURERS. THE PIPEFITTERS CLAIMED JURISDICTION OVER THE WORK AND BROUGHT THE DISPUTE TO THE NATIONAL JOINT BOARD. BY A DECISION DATED SEPTEMBER 26, 1969, THAT BODY ASSIGNED THE INSTALLATION OF THE FRP PIPE OUTSIDE MILL

PROPERTY TO THE PLUMBERS AND STEAMFITTERS ON THE BASIS OF TRADE PRACTICE. THE EVIDENCE OF HOMER GLASGOW, A JOURNEYMAN PIPEFITTER WHO HAS WORKED IN THE THUNDER BAY AND NORTHERN ONTARIO FOR A NUMBER OF YEARS, AND GEORGE MESERVIER, WHO HAS WORKED AS A PIPEFITTER AND NOW IS BUSINESS AGENT FOR THE PIPEFITTERS, LOCAL 628, IS THAT FRP PIPING HAS BEEN USED ON DISPOSAL SYSTEMS ON PROJECTS IN THUNDER BAY AND AT KAPUSKASING AND DRYDEN. ACCORDING TO THEIR TESTIMONY, PIPEFITTERS DID ALL OF THE WORK RELATED TO THE INSTALLATION OF THE FRP PIPING. PAST PRACTICE, THEN, IN THE INSTALLATION OF FRP PIPING SUPPORTS THE JURISDICTIONAL CLAIM OF THE LABOURERS.

16. HAVING REGARD TO ALL OF THE FOREGOING, THE BOARD DIRECTS THAT CANADIAN INTERNATIONAL COMSTOCK COMPANY LIMITED ASSIGN THE WORK OF INSTALLING FRP PIPE BEING USED IN CONNECTION WITH AN EFFLUENT DISPOSAL SYSTEM AT THE PULP MILL PROJECT OF ONTARIO-MINNESOTA PULP AND PAPER COMPANY LIMITED AT FORT FRANCES TO MEMBERS OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 628.

345-71-U: CANADIAN UNION OF CONSTRUCTION WORKERS (COMPLAINANT) V. SCHWENGER CONSTRUCTION LIMITED AND LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 527 (RESPONDENTS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS D.B. ARCHER AND F.W. MURRAY.

APPEARANCES AT THE HEARING: B. CHERCOVER, PETER CURTIS AND ROBERT RIVET FOR THE COMPLAINANT; JOHN C. BODWELL AND JOHN L'HOMME FOR SCHWENGER CONSTRUCTION LIMITED; F. MANONI FOR LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 527.

DECISION OF O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBER F.W. MURRAY: AUGUST 18, 1971.

1. THIS IS A COMPLAINT PURSUANT TO SECTION 65 OF THE LABOUR RELATIONS ACT ALLEGING THAT CERTAIN AGGRIEVED PERSONS HAVE BEEN DEALT WITH BY THE RESPONDENTS CONTRARY TO THE PROVISIONS OF SECTIONS 35(2) 50 AND 52 OF THE LABOUR RELATIONS ACT. THE APPLICANT ADVISED THAT IT WAS NOT ADDUCING EVIDENCE WITH RESPECT TO JEAN SERGE MATTE, ARTHUR BASTIEN AND GILLES LEMAIRE AND ACCORDINGLY THE APPLICATION INsofar AS THEY ARE CONCERNED IS DISMISSED.

2. THE REMAINING AGGRIEVED PERSONS, CONRAD RIOPEL, GERRY RICHARD, EDGAR HEMEL AND JACQUES MERANGER, COMPLAIN THAT THEY WERE DISCHARGED ON OR ABOUT APRIL 6, 1971 BY THE FOREMAN. THEY TESTIFY THAT

THEY WERE TOLD BY THE FOREMAN THAT THEY WERE BEING DISCHARGED BECAUSE THEY WERE MEMBERS OF THE CNTU. THE FOREMAN WAS NOT CALLED BY THE RESPONDENT EMPLOYER TO TESTIFY.

3. THE EMPLOYER SUBMITS THAT THESE EMPLOYEES WERE DISCHARGED UNDER THE TERMS OF A COLLECTIVE AGREEMENT WITH THE RESPONDENT LABOURERS' INTERNATIONAL UNION OF NORTH LOCAL 527 (HEREINAFTER REFERRED TO AS LOCAL 527). WHILE THE COLLECTIVE AGREEMENT PERMITS THE EMPLOYER TO REFUSE EMPLOYMENT TO PERSONS WHO REFUSE TO BECOME MEMBERS OF THE UNION THERE IS NOT ANY RIGHT TO DISCHARGE EMPLOYEES WHO BECOME MEMBERS OF ANOTHER TRADE UNION. MR. L'HOMME, THE EMPLOYER'S SUPERVISOR, TESTIFIED THAT HE INSTRUCTED THE FOREMAN TO DISCHARGE THE EMPLOYEES BECAUSE THEY WERE NOT MEMBERS OF THE LABOURERS UNION. HOWEVER, FURTHER IN HIS TESTIMONY HE STATED THAT HE INSTRUCTED THE FOREMAN TO DISCHARGE THE EMPLOYEES BECAUSE THEY COULD NOT BELONG TO TWO UNIONS.

4. AFTER CONSIDERING THE UNCONTRADICTED EVIDENCE OF THE AGGRIEVED PERSONS, THE FAILURE TO CALL THE FOREMAN AND THE EVIDENCE OF MR. L'HOMME, WE ARE SATISFIED THAT THE AGGRIEVED PERSONS WERE DISCHARGED BY THE RESPONDENT EMPLOYER BECAUSE OF THEIR MEMBERSHIP OR ACTIVITY ON BEHALF OF THE CNTU IN VIOLATION OF SECTION 50(A) OF THE LABOUR RELATIONS ACT.

5. THE MORE DIFFICULT ISSUE IS WHETHER LOCAL 527 HAS ALSO VIOLATED THE PROVISIONS OF THE LABOUR RELATIONS ACT AND PARTICULARLY SECTION 35(2) OF THAT ACT. THAT SECTION IS AS FOLLOWS:

35.-(2) NO TRADE UNION THAT IS A PARTY TO A COLLECTIVE AGREEMENT CONTAINING A PROVISION MENTIONED IN CLAUSE A OF SUBSECTION 1 SHALL REQUIRE THE EMPLOYER TO DISCHARGE AN EMPLOYEE BECAUSE,

(A) HE HAS BEEN EXPELLED OR SUSPENDED FROM MEMBERSHIP IN THE TRADE UNION;
OR

(B) MEMBERSHIP IN THE TRADE UNION HAS BEEN DENIED TO OR WITHHELD FROM THE EMPLOYER,

FOR THE REASON THAT THE EMPLOYEE,

(C) WAS OR IS A MEMBER OF ANOTHER TRADE UNION;

(D) HAS ENGAGED IN ACTIVITY AGAINST THE TRADE UNION OR ON BEHALF OF ANOTHER TRADE UNION;

- (E) HAS ENGAGED IN REASONABLE DISSENT
WITHIN THE TRADE UNION;
- (F) HAS BEEN DISCRIMINATED AGAINST BY
THE TRADE UNION IN THE APPLICATION
OF ITS MEMBERSHIP RULES; OR
- (G) HAS REFUSED TO PAY INITIATION FEES,
DUES OR OTHER ASSESSMENTS TO THE
TRADE UNION WHICH ARE UNREASONABLE.

6. THE APPLICANT ADDUCED NO EVIDENCE TO IMPLICATE LOCAL 527. THE ONLY TESTIMONY INDICATING THAT THE UNION WAS INVOLVED IN THE DISCHARGES WAS THE EVIDENCE OF MR. L'HOMME. MR. L'HOMME INDICATED THAT HE HAD RECEIVED A TELEPHONE CALL FROM MR. MANONI, A REPRESENTATIVE OF LOCAL 527, WHO REQUESTED MR. L'HOMME TO DISMISS EMPLOYEES WHO WERE NOT MEMBERS OF LOCAL 527 IN ACCORDANCE WITH THE PROVISIONS OF THE COLLECTIVE AGREEMENT AND HE THEN FURTHER ADDED THAT MR. MANONI REQUESTED HIM TO DISMISS EMPLOYEES BECAUSE THEY COULD NOT BELONG TO TWO UNIONS. HE STATED THAT MR. MANONI SAID TO HIM "TAKE OFF EVERYONE IN THE CNTU - THEY CAN'T BELONG TO TWO UNIONS." MR. MANONI STATED THAT HE HAD TOLD MR. L'HOMME TO DISMISS EMPLOYEES WHO WERE NOT MEMBERS OF LOCAL 527, BUT DENIED SAYING ANYTHING ABOUT TWO UNIONS. THE MATTER THUS TURNS ON AN ISSUE OF CREDIBILITY.

7. THE CREDIBILITY OF THE WITNESSES MUST BE ASSESSED AGAINST THE BACKGROUND OF EVENTS WHICH HAD PRECEDED THE DISMISSALS. IT APPEARS THAT THE CNTU HAD MADE AN APPLICATION FOR CERTIFICATION TO THIS BOARD CONCERNING THE EMPLOYEES OF THE RESPONDENT. THE CNTU THUS BECAME A RIVAL TO LOCAL 527 FOR THE EMPLOYEES WHO WERE REPRESENTED BY LOCAL 527. THE AGGRIEVED EMPLOYEES WERE INVOLVED IN THE CNTU APPLICATION. THE APPLICATION WAS WITHDRAWN ON THE MORNING OF APRIL 6TH AND LOCAL 527 WAS A PARTY TO THAT PROCEEDING AND HAD KNOWLEDGE OF THE WITHDRAWAL. IMMEDIATELY THEREAFTER, MR. MANONI TELEPHONED MR. L'HOMME AND THE DISMISSALS FOLLOWED THAT CONVERSATION.

8. IT IS APPARENT FROM THE TERMS OF THE COLLECTIVE AGREEMENT THAT IT WAS OPEN TO THE EMPLOYER TO DISCHARGE THE AGGRIEVED PERSONS AT ANY TIME BECAUSE THEY WERE NOT MEMBERS OF LOCAL 527. WHY THEN DID THE DISCHARGE FOLLOW SO CLOSELY ON THE HEELS OF THE WITHDRAWAL? OBVIOUSLY THERE WAS SOME RELATION BETWEEN THE TWO EVENTS. FURTHER, MR. L'HOMME WOULD HAVE NO REASON OR MOTIVE TO DISMISS THE EMPLOYEES BECAUSE THEY WERE MEMBERS OF THE CNTU WHEN HE HAD A PERFECTLY VALID REASON TO DO SO UNDER THE TERMS OF THE COLLECTIVE AGREEMENT, WHEREAS LOCAL 527 WHICH WAS OBVIOUSLY A RIVAL TO THE CNTU HAS SUCH A MOTIVE.

9. FURTHER, MR. L'HOMME WHO GAVE HIS TESTIMONY IS OBVIOUSLY

NOT A PERSON EXPERIENCED IN LABOUR RELATIONS MATTERS AND IT DID NOT APPEAR IN HIS EVIDENCE THAT HE UNDERSTOOD THE DISTINCTION BETWEEN DISMISSING AN EMPLOYEE UNDER A COLLECTIVE AGREEMENT AND DISMISSING AN EMPLOYEE BECAUSE HE WAS A MEMBER OF TWO UNIONS. HE WAS CROSS-EXAMINED CONCERNING MR. MANONI'S CONVERSATION. HE WAS VERY DEFINITE IN HIS OPINION THAT MR. MANONI HAD REQUESTED DISMISSAL OF PERSONS BECAUSE THEY WERE MEMBERS OF TWO UNIONS. HE HAD NO MOTIVE; HIS LACK OF SOPHISTICATION COUPLED WITH THE DEFINITIVENESS CONCERNING THE CONVERSATION AND THE BACKGROUND ELEMENTS MAKE HIS EVIDENCE ON THE BALANCE OF PROBABILITIES MORE CREDIBLE. IN THE RESULT, GIVEN THE MOTIVE AND THE TIMING AND AFTER CONSIDERING THE TESTIMONY OF BOTH MR. L'HOMME AND MR. MANONI WE PREFER THE EVIDENCE OF MR. L'HOMME AND FIND THAT MR. MANONI ON BEHALF OF LOCAL 527 INITIATED THE DISMISSAL OF THE AGGRIEVED PERSONS BECAUSE OF THEIR MEMBERSHIP IN OR ACTIVITY ON BEHALF OF THE CNTU.

10. THE QUESTION THEN NEXT ARISES IS WHETHER LOCAL 527 "REQUIRED" THE EMPLOYER TO DISCHARGE THE EMPLOYEES WITHIN THE MEANING OF SECTION 35(2). SECTION 35(2) IS INTENDED TO GIVE RELIEF TO EMPLOYEES WHO ARE HARMED BY THE ACTIVITIES OF A TRADE UNION AND IS AN ATTEMPT TO OBTAIN THE INEQUITY OF SADDLING THE EMPLOYER WITH COMPLETE RESPONSIBILITY FOR WRONGFUL ACTS BROUGHT ABOUT BECAUSE OF THE JOINT ACTION OF EMPLOYERS AND TRADE UNIONS. SEE WALKER V. MCANALLY FREIGHTWAYS, DIVISION OF DOMINION FREIGHTWAYS CO. LIMITED, 3 CLC PARA. 16,011 (OLRB, OCTOBER 1964).

11. WE ARE SATISFIED THAT THE WORD "REQUIRED" SHOULD BE GIVEN A LIBERAL INTERPRETATION WITH A VIEW TO PROTECTING EMPLOYEES WHO MAY BE THE VICTIMS OF COMBINED ACTIVITY BY A TRADE UNION AND AN EMPLOYER. IN THE CONSTRUCTION INDUSTRY AND PARTICULARLY IN THIS CASE, WHERE THE EMPLOYER IS DEPENDENT ON THE UNION'S CO-OPERATION IN GENERAL AND DEPENDENT ON THE UNION MORE SPECIFICALLY FOR THE SUPPLY OF LABOUR, A SIMPLE REQUEST MAY BE CATEGORIZED AS A REQUIREMENT FOR THE PURPOSE OF SECTION 35(2). IN ALL THE CIRCUMSTANCES WE FIND THAT THE RESPONDENT TRADE UNION HAS VIOLATED THE PROVISIONS OF SECTION 35(2) OF THE LABOUR RELATIONS ACT.

12. THERE IS NO EVIDENCE OF ANY VIOLATION OF SECTION 52 OF THE ACT AND THE APPLICATION INsofar AS IT CONCERNS SECTION 52 OF THE ACT IS DISMISSED.

13. IN THE RESULT THE BOARD FINDS THAT THE AGGRIEVED PERSONS HAVE BEEN DEALT WITH BY THE RESPONDENTS CONTRARY TO THE PROVISIONS OF THE ACT AND ARE ENTITLED TO COMPENSATION. THE BOARD FINDS THAT THE RESPONDENTS ARE JOINTLY AND SEVERELY RESPONSIBLE TO COMPENSATE THE AGGRIEVED PERSONS. ACCORDINGLY THE RESPONDENTS ARE DIRECTED TO PAY TO THE AGGRIEVED PERSONS COMPENSATION IN AN AMOUNT TO BE DETER-

MINED BY THE PARTIES. AS BETWEEN THE RESPONDENTS THEY EACH SHALL BE REQUIRED TO MAKE CONTRIBUTION OR INDEMNIFY EACH OTHER TO THE EXTENT OF FIFTY (50) PER CENT OF THE COMPENSATION PAID. FAILING AGREEMENT THE BOARD WILL FIX THE COMPENSATION UPON REQUEST IN WRITING BY ANY OF THE PARTIES.

DISSENT OF BOARD MEMBER D.B. ARCHER: August 18, 1971.

1. MY NOTES SHOW THAT THE AGGRIEVED PERSONS WERE DISMISSED BECAUSE THEY WOULD NOT JOIN THE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 527. ACCORDING TO THE TERMS OF THE AGREEMENT BETWEEN LABOURERS' AND SCHWENGER CONSTRUCTION LIMITED, GERRY RICHARD ADMITTED HE WAS TOLD HE WOULD HAVE TO JOIN THE LABOURERS' UNION. CONRAD RIOPEL WAS ASKED TO COME BACK BUT HE HAD ANOTHER JOB. MR. L'HOMME, SUPERINTENDENT, SAID HE OVERHEARD A CONVERSATION IN WHICH POCOL, FOREMAN, ASKED HIM TO GET A LABOURERS' CARD AND COME BACK TO WORK. RIOPEL REPLIED THAT HE WOULD NEVER JOIN THE LABOURERS' UNION. THOSE EMPLOYEES WHO SIGNED LABOURERS' CARDS WERE TAKEN BACK TO WORK BY SCHWENGER OR ASSIGNED TO OTHER JOBS BY THE UNION.

2. AS FOR TIMING, OBVIOUSLY THE INCUMBENT UNION DID NOT WANT TO INVOKE ITS UNION SECURITY CLAUSE WHILE THE CNTU APPLICATION WAS BEFORE THE BOARD. ON HEARING THE APPLICATION WAS DISMISSED THE UNION INSISTED ON ITS CONTRACTUAL RIGHTS.

3. IN VIEW OF THE FACT THAT THEY WERE TOLD BY THE COMPANY TO GET UNION CARDS AND NO UNION ATTEMPT WAS MADE TO WITHHOLD CARDS FROM THEM THERE CAN BE NO DISCRIMINATION THAT VIOLATES THE ACT.

4. I WOULD THEREFORE HAVE DISMISSED THE APPLICATION.

574-71-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (COMPLAINANT) V. LELY LIMITED (RESPONDENT).

BEFORE: RORY F. GGAN, VICE-CHAIRMAN AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: ROBERT WHITE FOR THE COMPLAINANT; ROBERT A. MACDONALD, JOHN BRATSCITSCH AND JOHN MACGREGOR FOR THE RESPONDENT.

DECISION OF THE BOARD: August 17, 1971.

1. THIS IS A COMPLAINT UNDER SECTION 65 OF THE ACT IN WHICH IT IS ALLEGED THAT THE RESPONDENT HAS DEALT WITH CHARLES DAVIDSON CONTRARY TO THE PROVISIONS OF SECTION 50 OF THE LABOUR RELATIONS ACT.

2. THE COMPLAINANT REQUESTS THAT THE RESPONDENT REINSTATE THE GRIEVOR WITH FULL COMPENSATION FOR LOSS OF EARNINGS AND OTHER EMPLOYEE BENEFITS.

3. DAVIDSON WAS TAKEN ON BY THE COMPANY AS A SPRAY PAINTER IN ABOUT THE MIDDLE OF SEPTEMBER 1970.

4. ABOUT JUNE 7, 1971, DAVIDSON WENT TO THE U.A.W. HALL IN HAMILTON TO DISCUSS THE POSSIBILITY OF BRINGING THE UNION INTO THE PLANT. HE WAS ACCOMPANIED BY A FELLOW EMPLOYEE, JOHN WATSON.

5. DAVIDSON AND WATSON OBTAINED A SUPPLY OF UNION CARDS AND PROCEEDED TO HAVE THEIR FELLOW EMPLOYEES SIGN THEM. THEY APPROACHED THE MEN ON THEIR OWN TIME OUTSIDE THE PLANT. THE APPLICATION FOR CERTIFICATION WAS MADE ON JUNE 10, 1971 SO THAT THE CAMPAIGN MUST HAVE CONSUMED LESS THAN THREE DAYS IN ALL. ON JUNE 13TH, A SUNDAY, A MEETING OF THOSE EMPLOYEES WHO HAD JOINED THE UNION WAS HELD IN THE UNION HALL. DAVIDSON AND WATSON PHONED THE MEMBERS TO ADVISE THEM OF THE MEETING.

6. ON MONDAY, JUNE 14, 1971, DAVIDSON REPORTED FOR WORK AT 8:00 A.M. SOMETIME IN THE VICINITY OF 9:15 A.M., DAVIDSON WAS ADVISED THAT HIS EMPLOYMENT WITH THE COMPANY WAS TERMINATED. HE WAS PAID AT 1:30 P.M. THE PAY COVERED HIS EARNINGS TO 5:00 P.M. OF JUNE 14TH. THE INFORMATION WAS DELIVERED TO DAVIDSON BY KEN GODIN WHOM DAVIDSON AND ANOTHER UNION WITNESS IDENTIFY AS A FOREMAN, BUT WHOM THE COMPANY MAINTAIN IS SIMPLY A LEAD HAND. THERE IS NO DISPUTE THAT GODIN WAS THE PERSON SENT BY MANAGEMENT TO DELIVER A MESSAGE WITH RESPECT TO THE TERMINATION OF DAVIDSON.

7. DAVIDSON TESTIFIED THAT GODIN TOLD HIM THAT HE WAS BEING LAID OFF FOR LACK OF WORK AND THAT HE WOULD BE RECALLED. THIS EVIDENCE IS CORROBORATED BY THE UNION WITNESS GASPARI WHO WAS WITHIN HEARING DISTANCE OF DAVIDSON AND GODIN AT THE TIME. THE COMPANY'S POSITION ON THIS POINT WAS THAT GODIN WAS INSTRUCTED TO TELL DAVIDSON HE WAS DISCHARGED. GODIN, HOWEVER, WAS NOT CALLED TO GIVE EVIDENCE, SO THAT THE STATEMENTS OF THE UNION WITNESSES AS TO THE CONTENT OF THE MESSAGE REMAINS UNCONTRADICTED.

8. DAVIDSON AND GASPARI BOTH TESTIFIED THAT AT A MEETING CALLED BY MANAGEMENT AT ABOUT 4:30 P.M. ON JUNE 14TH, A QUESTION WAS PUT BY AN EMPLOYEE TO MR. BRATSCHITSCH, THE PLANT MANAGER, WITH RESPECT TO DAVIDSON'S POSITION. EACH WITNESS STATED THAT THE PLANT MANAGER HAD SAID THAT DAVIDSON HAD BEEN LAID OFF BECAUSE OF LACK OF WORK - THAT HE WOULD BE RECALLED IF HE WANTED TO COME BACK, BUT THAT HE MIGHT NOT WANT TO RETURN. THEY FURTHER STATED THAT DAVIDSON HAD THEN SAID TO THE PLANT MANAGER NOT TO WORRY THAT HE WOULD BE BACK.

THE PLANT MANAGER, ON THE OTHER HAND, SAID THAT WHILE A QUESTION HAD BEEN ASKED BY AN EMPLOYEE CONCERNING DAVIDSON, HE, BRATSCITSCH, HAD SAID THAT THAT WAS NOT A MATTER THAT COULD BE DISCUSSED AT THAT MEETING.

9. DAVIDSON STATED THAT HE WAS EXPECTING THAT NOTICE OF THE APPLICATION FOR CERTIFICATION WOULD BE DELIVERED TO THE COMPANY ON JUNE 14TH. AT ABOUT 8:30 THAT MORNING HE ASCERTAINED THAT THE NOTICE HAD ARRIVED IN THE COMPANY'S MAIL. SOME TEN MINUTES, LATER, ACCORDING TO DAVIDSON, A MRS. MARTIN, AMONG WHOSE DUTIES WAS THE DISTRIBUTION OF THE MAIL WITHIN THE PLANT, PASSED BY AND REMARKED "YOU FELLOWS HAVE DONE A RIGHT SILLY THING". WHEN ASKED WHAT SHE MEANT, SHE REPLIED "YOU KNOW WHAT I MEAN". SHE WAS CARRYING PAPERS AT THE TIME AND PROCEEDED TO THE PLANT MANAGER'S OFFICE. THERE IS NO SUGGESTION THAT MRS. MARTIN IS PART OF MANAGEMENT.

10. THE WITNESS SAID THAT APPROXIMATELY TEN MINUTES AFTER MARTIN ENTERED THE PLANT MANAGER'S OFFICE, THE LATTER CALLED GODIN AND JOHN MACGREGOR, THE PLANT SUPERINTENDENT, TO HIS OFFICE. THE CALL, ACCORDING TO BOTH THE WITNESSES FOR THE UNION, WAS MADE OVER THE "INTERCOM" AND COULD BE HEARD THROUGHOUT THE PLANT. DAVIDSON SAID THAT ABOUT HALF AN HOUR AFTER THE CALL, GODIN EMERGED FROM THE PLANT MANAGER'S OFFICE AND TOLD HIM HE WAS LAID OFF.

11. THE COMPANY'S EVIDENCE WAS DIRECTED TOWARDS ESTABLISHING THAT DAVIDSON HAD BEEN DISCHARGED AND NOT LAID OFF AS THE UNION MAINTAINED. THERE HAD BEEN A TIME STUDY COMPLETED SHORTLY BEFORE MAY 27, 1971 WHICH INDICATED TO THE COMPANY THAT DAVIDSON WAS WASTING A CONSIDERABLE AMOUNT OF TIME. THE STUDY COVERED ONE DAY OF DAVIDSON'S ACTIVITIES WHEN HE WAS DOING LABOURING RATHER THAN PAINTING. HE WAS SPOKEN TO WITH RESPECT TO THIS REPORT. ALTHOUGH IT WAS POINTED OUT TO HIM THAT THIS WAS NOT A DISCIPLINARY REPRIMAND, HE WAS NEVERTHELESS ASKED TO COOPERATE IN AN ATTEMPT TO INCREASE EFFICIENCY.

12. THERE IS NO DOUBT THAT ON JUNE 8TH AND 9TH, 1971 SERIOUS PROBLEM DEVELOPED BETWEEN DAVIDSON AND THE MANAGEMENT WITH RESPECT TO THE APPLICATION OF PAINT TO CERTAIN COMPONENTS. THE EVIDENCE OF THE COMPANY IS THAT DAVIDSON WANTED TO SPRAY PAINT THE COMPONENTS BUT THE COMPANY, BECAUSE OF PAST EXPERIENCE, REQUIRED THAT THEY BE DIPPED. DAVIDSON, IN A HEATED ARGUMENT, SAID THAT THE PARTS WERE TOO HEAVY TO DIP AND REFUSED TO DO SO. DAVIDSON DID NOT DENY THAT THERE HAD BEEN SUCH AN INCIDENT, ALTHOUGH HIS ACCOUNT OF IT WAS LESS DETAILED.

13. ON FRIDAY, JUNE 11, 1971, DAVIDSON WAS ASSIGNED TO COMPLETE A RUSH ORDER AND WAS ASKED TO WORK OVERTIME. NO CHECK WAS MADE ON FRIDAY, BUT BRATSCITSCH SAID THE WORK WAS COMPLETED ON MONDAY. DAVIDSON'S EVIDENCE CONFIRMS THAT HE WAS GIVEN THE OVERTIME ASSIGNMENT ON

THAT DATE. HE ADDED THAT THE FOREMAN ASKED IF HE COULD GET THE PARTS DONE ON TIME AND ADDED "YOU HAVE NEVER LET US DOWN YET".

14. BRATSCHITSCH AND MACGREGOR SWORE THAT THEY HELD A CUSTOMARY FRIDAY MEETING TO REVIEW THEIR PROBLEMS. THIS WAS HELD AFTER NORMAL PLANT HOURS. THEY EACH TESTIFIED THAT THEY DISCUSSED DAVIDSON AND THE DIFFICULTY THEY HAD HAD WITH HIM. MACGREGOR STATES THAT HE DECIDED THEN THAT DAVIDSON WOULD HAVE TO GO. HE SAID THAT BRATSCHITSCH WAS NOT SURE AND WANTED TO THINK ABOUT THE MATTER. BRATSCHITSCH SAID THAT THEY CONCLUDED THEY WOULD DISMISS DAVIDSON MAINLY BECAUSE HE WOULD NOT FOLLOW INSTRUCTIONS. HOWEVER, HE FELT HE WANTED TO THINK ABOUT IT OVER THE WEEKEND. NOTHING APPEARS TO HAVE BEEN SAID ABOUT THE OVERTIME ASSIGNMENT WHICH DAVIDSON WAS ON DURING THE DISCUSSION. DAVIDSON, WITHOUT HIS KNOWLEDGE, WAS THUS LEFT IN THIS DAMOCLEAN LIKE SITUATION UNTIL MONDAY, ACCORDING TO THE EVIDENCE OF THE COMPANY.

15. BRATSCHITSCH'S EVIDENCE OF WHAT TRANSPIRED ON THE MORNING OF JUNE 14TH IS THAT HE CAME TO THE OFFICE AT 8:00 A.M. AT THIS TIME, HE SAID, HE HAD DECIDED TO DISCHARGE DAVIDSON. HE SAID THAT MACGREGOR WAS STANDING OUTSIDE THE WINDOW TO HIS OFFICE AND HE CALLED HIM AND TOLD HIM OF HIS DECISION. HE SAYS HE INSTRUCTED MACGREGOR TO DISMISS DAVIDSON BUT WAS TO LET HIM FINISH THE DAY. HE STATED, HE DID NOT KNOW ABOUT THE UNION'S APPLICATION FOR CERTIFICATION AT THIS TIME. HE SAID HE LEFT HIS OFFICE TO GO THROUGH THE PLANT AND DID NOT GET BACK TO HIS OFFICE UNTIL 8:30 A.M. AND WAS BUSY WITH A SALESMAN UNTIL AROUND 10:00 A.M. WHEN HE EXAMINED THE MAIL. HE WAS SHOCKED BY THE NEWS IT CONTAINED. HE CALLED MACGREGOR AND GODIN ON THE INTERCOM. HE INSTRUCTED MACGREGOR TO CALL A MEETING OF EMPLOYEES FOR THE AFTERNOON IN AN ATTEMPT TO FIND OUT WHY THE EMPLOYEES HAD JOINED A UNION. HE TOLD THE MEETING THAT HE WAS SHOCKED BY THE APPLICATION AND THAT THE COMPANY COULD NOT AFFORD TO HAVE A UNION.

16. THE CONFLICT OF EVIDENCE WITH RESPECT TO THE QUESTIONS PUT AND THE ANSWERS GIVEN WITH RESPECT TO DAVIDSON'S TERMINATION HAVE BEEN RECORDED EARLIER IN THE DECISION.

17. MACGREGOR'S EVIDENCE WITH RESPECT TO THE OCCURRENCES OF JUNE 14TH IS THAT SHORTLY AFTER 8:00 A.M. BETWEEN 8:00 A.M. AND 8:30 A.M. HE WAS CALLED INTO BRATSCHITSCH'S OFFICE. CONTRARY TO THE TESTIMONY GIVEN BY BRATSCHITSCH, MACGREGOR SAYS HE WAS IN HIS OFFICE AT THE TIME AND WAS CALLED BY INTERCOM. BRATSCHITSCH SAID TO HIM "LET THE PAINTER GO - FIRE HIM". HE SAID HE PASSED THE WORD ON TO GODIN WHOM HE REFERRED TO AS HIS LEAD HAND, TO GO AND TELL DAVIDSON HE WAS DISCHARGED.

18. IN CROSS-EXAMINATION, MACGREGOR STATED THAT GODIN MAY HAVE BEEN CALLED ON THE INTERCOM BUT IN ANY EVENT HE CAME A FEW MINUTES

AFTER HE DID. THEY WENT INTO BRATSCHITSCH'S OFFICE, HE SAID, AND BRATSCHITSCH TOLD THEM TO LET "CHARLIE" GO. THEY THEN DISCUSSED OTHER THINGS. THIS MEETING LASTED 15-20 MINUTES. HE THEN TOLD GODIN TO GO AND TELL DAVIDSON OF HIS DISMISSAL. MACGREGOR STATED THAT AS HE WENT INTO BRATSCHITSCH'S OFFICE HE SAW SOMEONE SITTING OUT IN FRONT.

19. MACGREGOR FURTHER TESTIFIED THAT HE KNEW NOTHING ABOUT THE UNION COMING IN UNTIL MID-MORNING OF JUNE 14TH. HE SAID HE HAD HEARD NO WHISPER OF IT - THAT IT WAS A VERY GREAT SURPRISE TO HIM. HE STATED THAT BRATSCHITSCH CALLED HIM IN A SECOND TIME BY INTERCOM AND TOLD HIM HE HAD BEEN SHOCKED BY NEWS OF THE UNION APPLICATION. HE STATED THAT THE REST OF THE STAFF CAME IN UNTIL THE PARTS MANAGER, THE PURCHASING AGENT, GODIN AND JEAN MARTIN WERE ALL THERE. HE SAID THIS MEETING TOOK PLACE WELL AFTER TEN O'CLOCK - AFTER THE COFFEE BREAK. BRATSCHITSCH TOLD THEM ABOUT THE APPLICATION. THE WITNESS SAID HE ASKED BRATSCHITSCH WHAT IT WAS, AND WAS SIMPLY TOLD IT WAS AN APPLICATION FOR CERTIFICATION. THEY DISCUSSED THE APPLICATION AND WONDERED WHY IT HAPPENED. BRATSCHITSCH DID NOT MENTION THIS MEETING.

20. THE UNION WITNESS, GASPARI, TESTIFIED THAT ABOUT 8:30 A.M. ON JUNE 14TH AT THE REQUEST OF DAVIDSON, HE WENT TO FIND OUT IF ANY MAIL HAD ARRIVED CONCERNING THE APPLICATION FOR CERTIFICATION. HE WENT TO THE PARTS DEPARTMENT AND SPOKE TO PATTERSON, THE PARTS MANAGER AND TO THE PURCHASING AGENT. HE ASKED IF ANY MAIL HAD COME IN FROM THE U.A.W. HE WAS TOLD NONE HAD COME FROM THE UNION BUT A REGISTERED LETTER FROM THE ONTARIO LABOUR RELATIONS BOARD HAD ARRIVED AND HAD BEEN GIVEN TO MRS. MARTIN.

21. IN ASSESSING THE EVIDENCE, WE FIND WE MUST ACCEPT THE EVIDENCE OF THE UNION WITNESSES AS TO GODIN'S NOTICE TO DAVIDSON THAT HE WAS LAID OFF AND WITH RESPECT TO THE STATEMENTS ATTRIBUTED BY THEM TO BRATSCHITSCH - AT THE MEETING AT 4:30 P.M. I.E. THAT DAVIDSON WOULD BE RECALLED. WE ARE OF THE OPINION THAT THIS EVIDENTARY CONFLICT ADVERSELY REFLECTS UPON THE GENERAL CREDIBILITY OF THE COMPANY'S EVIDENCE. IT INDICATES THERE WAS A DELIBERATE TACTICAL CHANGE FROM THE REASONS FOR THE TERMINATION INITIALLY ADVANCED BY THE COMPANY.

22. AFTER CONSIDERING THE CIRCUMSTANCES WE FIND IT INCONCEIVABLE THAT BRATSCHITSCH'S ATTENTION WAS NOT DRAWN TO THE RECEIPT OF THE UNION'S APPLICATION FOR CERTIFICATION BEFORE 10:00 A.M. AS HE STATES. THE PARTS MANAGER AND OTHERS IN HIS OFFICE, WERE AWARE OF IT AT ABOUT 8:30 A.M. MRS. MARTIN WHO DELIVERED IT TO BRATSCHITSCH'S OFFICE BETWEEN 8:30 A.M. AND 9:00 A.M. WAS NOT ONLY AWARE OF IT BUT ALSO KNEW THAT DAVIDSON WAS CONNECTED WITH IT. SHE OBVIOUSLY DISAPPROVED OF THE APPLICATION AND CAN HARDLY HAVE BEEN TREATING IT AS A

PIECE OF ROUTINE CORRESPONDENCE IN VIEW OF HER REMARKS. WE ARE CONVINCED THAT IF MRS. MARTIN AND THE OTHERS KNEW OF DAVIDSON'S CONNECTION WITH THE UNION AND THE APPLICATION EARLY THAT MORNING, SO DID BRATSCHITSCH.

23. ON THE BALANCE OF PROBABILITY AS INDICATED BY ALL OF THE EVIDENCE, WE FIND THAT EVEN IF WE ASSUME THAT BRATSCHITSCH HAD IN FACT SPENT THE WEEKEND DEBATING WHETHER TO DISCHARGE DAVIDSON, ANY DOUBTS HE MAY HAVE BEEN ENTERTAINING WERE INSTANTLY DISSOLVED BY THE ARRIVAL OF THE NOTICE OF THE UNION'S APPLICATION FOR CERTIFICATION. THE APPLICATION AND DAVIDSON'S CONNECTION WITH IT WERE THE FACTORS WHICH ULTIMATELY BROUGHT ABOUT HIS DISMISSAL BY BRATSCHITSCH.

24. WE THEREFORE FIND THAT THE RESPONDENT TERMINATED THE SERVICES OF CHARLES DAVIDSON ON JUNE 14, 1971 CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT.

25. THE BOARD THEREFORE DIRECTS THAT THE RESPONDENT FORTHWITH REINSTATE CHARLES DAVIDSON IN THE SAME OR A LIKE POSITION THERETO AS HE HELD AT THE DATE OF HIS DISCHARGE.

26. AS COMPENSATION FOR LOSS OF WAGES FROM JUNE 14, 1971 TO JULY 21, 1971, THE RESPONDENT FORTHWITH SHALL PAY CHARLES DAVIDSON THE SUM OF \$568.22.

27. THE PARTIES ARE TO MEET FORTHWITH WITH A VIEW TO SETTLING THE AMOUNT OF LOSS OF EARNINGS, IF ANY, THAT CHARLES DAVIDSON SUSTAINED BETWEEN JULY 21, 1971 AND THE DATE OF HIS REEMPLOYMENT BY THE RESPONDENT. IN DEFAULT OF AGREEMENT WITHIN 14 DAYS HEREOF THE BOARD AT THE REQUEST OF EITHER PARTY WILL GIVE THE PARTIES AN OPPORTUNITY TO PRESENT EVIDENCE AND MAKE REPRESENTATIONS WITH RESPECT TO ANY ADDITIONAL AMOUNT ALLEGED TO BE DUE CHARLES DAVIDSON WHICH AMOUNT WILL THEREAFTER BE DETERMINED BY THE BOARD.

695-71-R: CANADIAN TELEPHONE EMPLOYEES' ASSOCIATION (APPLICANT) V. TELE-DIRECT LTD. (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: MISS M. N. WHITHAM AND W. H. CAIRNS FOR THE APPLICANT; GEORGE D. BROOKS, D. E. PEZZACK AND H. S. PAUL FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER J.E.C. ROBINSON, Q.C.
AUGUST 16, 1971.

1. HAVING REGARD TO THE EVIDENCE BEFORE THE BOARD AND TO THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.
2. AT THE HEARING OF THIS MATTER ON JULY 26, 1971, THE APPLICANT SOUGHT A BARGAINING UNIT ENCOMPASSING ALL EMPLOYEES IN ONTARIO. THE RESPONDENT INDICATED THAT IT WAS IN AGREEMENT WITH THE APPLICANT'S REQUEST IN THIS REGARD.
3. AS WAS INDICATED IN THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO CASE, OLRB M.R. MAY 1960, P. 169, IT IS NOT THE BOARD'S USUAL PRACTICE TO FIND AN APPROPRIATE BARGAINING UNIT UPON A PROVINCE-WIDE BASIS. IT WOULD APPEAR THAT THE USUAL POLICY OF THE BOARD IN THIS RESPECT IS TO GENERALLY LIMIT THE GEOGRAPHIC AREA TO THE INCORPORATED MUNICIPALITY.
4. WITH RESPECT TO THE AGREEMENT OF THE PARTIES IN THIS REGARD, THE VIEW EXPRESSED BY THE BOARD IN THE REXWOOD PRODUCTS LIMITED CASE OLRB M.R. NOVEMBER 1968, P. 819, WOULD APPEAR PERTINENT WHEREIN AT PAGE 821, IT IS STATED:

"WHILE THE BOARD ENTERTAINS THE REPRESENTATIONS AND EVIDENCE OF THE PARTIES WITH RESPECT TO THE DESCRIPTION OF THE BARGAINING UNIT, THE RESPONSIBILITY OF DETERMINING THE UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING RESTS WITH THE BOARD, PURSUANT TO THE PROVISIONS OF SECTION 6 OF THE ACT."
5. HAVING REGARD TO THESE PRINCIPLES AND HAVING REVIEWED THE REPRESENTATIONS OF THE PARTIES IN THIS RESPECT, WE ARE OF THE OPINION THAT A PROVINCE-WIDE BARGAINING UNIT WOULD BE INAPPROPRIATE UNDER THE PARTICULAR CIRCUMSTANCES OF THIS CASE. ACCORDINGLY, WE FIND THAT TWO BARGAINING UNITS WOULD BE APPROPRIATE.
6. THE BOARD THEREFORE FINDS THAT ALL OFFICE AND CLERICAL EMPLOYEES AT OTTAWA SAVE AND EXCEPT CHIEF PROJECT CLERKS, PERSONS ABOVE THE RANK OF CHIEF PROJECT CLERK, AND HAVING REGARD TO THE AGREEMENT OF THE PARTIES, SECRETARIES AND DIRECTORY SALES REPRESENTATIVES, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING AND HEREINAFTER REFERRED TO AS BARGAINING UNIT #1.
7. THE BOARD FURTHER FINDS THAT ALL OFFICE AND CLERICAL EM-

PLOYEES AT TORONTO SAVE AND EXCEPT CHIEF PROJECT CLERKS, PERSONS ABOVE THE RANK OF CHIEF PROJECT CLERK, AND HAVING REGARD TO THE AGREEMENT OF THE PARTIES, SECRETARIES AND DIRECTORY SALES REPRESENTATIVES, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING AND HEREINAFTER REFERRED TO AS BARGAINING UNIT #2.

8. IN SUPPORT OF ITS APPLICATION FOR CERTIFICATION, THE APPLICANT FILED EVIDENCE OF MEMBERSHIP ON BEHALF OF 246 PERSONS, 238 NAMES OF WHICH CORRESPOND WITH THE 262 NAMES APPEARING ON THE RESPONDENT'S REVISED LIST. THIS EVIDENCE OF MEMBERSHIP CONSISTS OF SEPARATE APPLICATIONS FOR MEMBERSHIP ACCOMPANIED BY RECEIPTS. ALTHOUGH THESE RECEIPTS INDICATE THE PAYMENT OF ONE DOLLAR BY THE PAYEE AND BEAR THE SIGNATURE OF THE COLLECTOR, THEY ARE NOT COUNTERSIGNED BY THE PERSON APPLYING FOR MEMBERSHIP.

9. IN THE MERCURY TERRAZZO LIMITED CASE O.L.R.B. M.R. JUNE 1970 P. 291 AT PAGE 293, THE FOLLOWING STATEMENTS APPEAR:

"THE BOARD, OF NECESSITY, HAS TO RELY HEAVILY ON THE DOCUMENTARY EVIDENCE OF MEMBERSHIP SUBMITTED IN SUPPORT OF AN APPLICATION FOR CERTIFICATION. FOR THAT REASON, ALTHOUGH THE BOARD HAS NOT MADE IT ABSOLUTELY MANDATORY, IT IS HIGHLY DESIRABLE, AND THE BOARD REQUESTS, THAT RECEIPTS SUBMITTED INDICATING THE PAYMENT OF INITIATION FEES BE SIGNED NOT ONLY BY THE COLLECTORS BUT ALSO COUNTERSIGNED BY THE APPLICANTS FOR MEMBERSHIP. THIS PRECAUTION PROVIDES MORE ADEQUATE PROTECTION FOR BOTH THE BOARD AND THE APPLICANT TRADE UNION WHICH IS RELYING ON THE DOCUMENTARY EVIDENCE. WHERE THERE IS ANY DOUBT ON THE PART OF THE BOARD AS TO THE PROPRIETY OF THE PROCEDURES FOLLOWED BY AN APPLICANT TRADE UNION IN THE SECURING OF THE EVIDENCE OF MEMBERSHIP UPON WHICH IT RELIES, THE ABSENCE OF COUNTERSIGNATURES ON THE RECEIPTS FOR INITIATION FEES MUST WEIGH HEAVILY AGAINST THE APPLICANT."

10. THE BOARD, HOWEVER, NEVERTHELESS FOUND THAT THE ABSENCE OF COUNTERSIGNATURES ON THE RECEIPTS IN THE CIRCUMSTANCES OF THE ABOVE CITED CASE, DID NOT SO WEAKEN THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO CAUSE THE BOARD TO DIRECT THE TAKING OF A REPRESENTATION VOTE. ONE OF THE CIRCUMSTANCES WHICH THE BOARD TOOK INTO

ACCOUNT WAS THE FACT THAT THE RECEIPT APPEARED ON THE REVERSE SIDE OF THE APPLICATION FOR MEMBERSHIP. SUCH A "COMBINATION" APPLICATION FOR MEMBERSHIP AND RECEIPT CARD IS CLEARLY DISTINGUISHABLE FROM THE EVIDENCE OF MEMBERSHIP SUBMITTED IN THE INSTANT CASE, WHICH CONSISTS OF TWO SEPARATE DOCUMENTS REPRESENTING INDIVIDUAL APPLICATIONS AND RECEIPTS.

11. THE EVIDENCE OF MEMBERSHIP FILED IN THE PRESENT CASE, HOWEVER, APPEARS TO BE MORE SIMILAR TO THE EVIDENCE OF MEMBERSHIP FILED IN THE STERLING TILE COMPANY CASE OLRB M.R. FEBRUARY 1970, P. 1346, WHERE THE BOARD FOUND THAT THE ABSENCE OF COUNTERSIGNATURES OF THE PAYEES ON THE RECEIPTS SUFFICIENTLY WEAKENED THE EVIDENCE OF MEMBERSHIP SO AS TO DISENTITLE THE APPLICANT TO CERTIFICATION WITHOUT A REPRESENTATION VOTE. REFERENCE IN THIS REGARD WAS MADE TO SECTION 7(2) OF THE ACT. WE ACCORDINGLY ADOPT THE PRINCIPLE ENUNCIATED THEREIN AND WE LIKEWISE DIRECT THAT A REPRESENTATION VOTE BE TAKEN IN THE INSTANT CASE.

. . .

14. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE APPLICANT IN THEIR EMPLOYMENT RELATIONS WITH THE RESPONDENT.

15. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER O. HODGES. August 16, 1971.

1. I AGREE WITH THE MAJORITY IN THE MATTER OF THE MEMBERSHIP EVIDENCE AND CONCUR IN THE DECISION TO ORDER A VOTE AT BOTH LOCATIONS.

2. I DISSENT IN THE MATTER OF ESTABLISHING TWO BARGAINING UNITS. MY VIEW IS THAT IN THE CIRCUMSTANCES OF THIS CASE A PROVINCE-WIDE UNIT IS APPROPRIATE. THE EVIDENCE OF THE RESPONDENT IS THAT NO EXPANSION BEYOND THE PRESENT TWO LOCATIONS IS CONTEMPLATED.

3. THE APPLICANT SOUGHT AND THE RESPONDENT AGREED TO THE ESTABLISHMENT OF A PROVINCE-WIDE UNIT. THE EMPLOYEES AT BOTH OF THESE LOCATIONS ARE CLASSIFIED AS OFFICE AND CLERICAL AND THE EXCLUSIONS ARE IDENTICAL.

4. ALL OF THE EMPLOYEES WERE, UNTIL 1 JULY, 1971, PART OF A LARGER UNIT CERTIFIED BY THE CANADA LABOUR RELATIONS BOARD MORE THAN TWENTY YEARS AGO, AND SUBSEQUENTLY COVERED BY ONE COLLECTIVE BARGAINING AGREEMENT. THAT AGREEMENT WAS BETWEEN THE APPLICANT IN THIS MATTER AND THE PREDECESSOR EMPLOYER. THERE OBVIOUSLY IS A HISTORY OF A COMMUNITY OF INTEREST AMONG THESE EMPLOYEES AND A DESIRE TO CONTINUE

THEIR PRACTICE OF BARGAINING AS A SINGLE UNIT WITH ONE COLLECTIVE BARGAINING AGREEMENT ARRIVED AT THROUGH ONE SET OF NEGOTIATIONS. IT APPEARS THAT THE PRACTICE WAS FOUND TO BE SATISFACTORY BY THE RESPONDENT AS WELL, IN THE LIGHT OF THE CLEAR ENDORSEMENT OF THE POSITION TAKEN BY THE APPLICANT ON THIS QUESTION.

5. REPRESENTATIONS WERE MADE BY THE APPLICANT AS TO THE EFFECT OF S.6(1) OF THE ACT IN EXCLUDING INDIVIDUAL EMPLOYEES IN MUNICIPALITIES OTHER THAN THE TWO LOCATIONS WHERE THERE WERE EMPLOYEES ON THE DATE OF APPLICATION. THAT SECTION IS:

"6.(1) UPON AN APPLICATION FOR CERTIFICATION, THE BOARD SHALL DETERMINE THE UNIT OF EMPLOYEES THAT IS APPROPRIATE FOR COLLECTIVE BARGAINING, BUT IN EVERY CASE THE UNIT SHALL CONSIST OF MORE THAN ONE EMPLOYEE AND THE BOARD MAY, BEFORE DETERMINING THE UNIT, CONDUCT A VOTE OF ANY OF THE EMPLOYEES OF THE EMPLOYER FOR THE PURPOSE OF ASCERTAINING THE WISHES OF THE EMPLOYEES AS TO THE APPROPRIATENESS OF THE UNIT. R.S.O. 1960, c.202, s.6(1)."

THERE IS SOME EVIDENCE THAT IN ONE INSTANCE, A SOLE EMPLOYEE WAS ASSIGNED TO AN OUTLYING AREA FOR SEVERAL YEARS. SUCH AN EMPLOYEE IT WAS ARGUED, WOULD BE DENIED THE RIGHT TO REPRESENTATION BY WAY OF CERTIFICATION. A PROVINCIAL CERTIFICATE WOULD GUARANTEE SUCH AN EMPLOYEE THE RIGHT TO REPRESENTATION BY A CERTIFIED BARGAINING AGENT. I FOLLOW THIS ARGUMENT IN THE CIRCUMSTANCES OF THIS CASE, IN PART BECAUSE OF THE NATURE OF THE RESPONDENT'S BUSINESS. TELEPHONES ARE EVERYWHERE IN EVIDENCE ACROSS THE PROVINCE. THE ASSIGNMENT OF INDIVIDUAL EMPLOYEES TO A LOCATION IN OTHER MUNICIPALITIES CAN BE SEEN AS A RECURRING POSSIBILITY. WHILE VOLUNTARY AGREEMENT WITHIN THE TERMS OF A PROVINCE-WIDE COLLECTIVE AGREEMENT IS OPEN TO THE PARTIES, THE BOARD IS BEING ASKED TO RECOGNIZE AND DEAL WITH THE PROBLEM NOW. IN REFUSING TO DO SO, THE MAJORITY SET THE STAGE FOR A DISPUTE AT THE BARGAINING TABLE LATER. HOWEVER, THE MOST SERIOUS FAULT OF THE MAJORITY IS TO DENY THE RIGHT OF REPRESENTATION TO A SINGLE EMPLOYEE WHO WOULD OTHERWISE COME WITHIN THE SCOPE OF A CERTIFICATE.

6. THE DECISION TO ESTABLISH TWO BARGAINING UNITS RATHER THAN ONE ALSO OPENS THE DOOR FOR A BARGAINING PROBLEM. THERE IS A REASONABLE POSSIBILITY THAT, GIVEN TWO CERTIFICATES, THE RESPONDENT WILL INSIST UPON SEPARATE COLLECTIVE AGREEMENTS, AND THUS THE BOARD FORCES THE ISSUE OF ONE COLLECTIVE AGREEMENT OR TWO COLLECTIVE AGREEMENTS TO

THE BARGAINING TABLE. IN MY OPINION THE CREATION OF A CONDITION CON-
 DUCIVE TO A DISPUTE BETWEEN THE PARTIES, AS IS EVIDENT HERE, SHOULD
 BE VERY CAREFULLY AVOIDED BY THE BOARD.

7. THERE IS A GROWING LIST OF CASES WHEREIN THE FRAGMENTATION
 OF BARGAINING UNITS IS DENIED BY THE BOARD. IT CAN BE SAID THAT THERE
 IS NOW A FIRM BOARD POLICY TO RESIST FRAGMENTATION OF BARGAINING UNITS,
 AND THAT POLICY SHOULD BE FOLLOWED RATHER THAN DENIED IN THE INSTANT
 CASE.

8. THE RIGHTS OF EMPLOYEES UNDER S.3 OF THE ACT:

"EVERY PERSON IS FREE TO JOIN A TRADE
 UNION OF HIS OWN CHOICE AND TO PARTI-
 CIPATE IN ITS LAWFUL ACTIVITIES. R.S.O.
 1960, c. 202, s.4."

WOULD BE ABRIDGED BY A PROVINCIAL CERTIFICATION, AT ANY NEW LOCATION,
 AS TO THE CHOICE OF UNION. HOWEVER, THE SAME SITUATION PREVAILS IN
 METRO TORONTO CERTIFICATIONS, AND AS A RESULT OF SOME COUNTY-WIDE CER-
 TIFICATIONS. GIVEN A CHOICE OF EMPLOYMENT UNDER THE TERMS AND CONDI-
 TIONS OF A PROVINCE-WIDE COLLECTIVE AGREEMENT PROVIDING NEGOTIATED
 GRIEVANCE PROCEDURES, ARBITRATION, WAGE RATES, HOURS OF WORK, PENSIONS
 AND OTHER WELFARE BENEFITS, WHAT NORMAL REASONABLE PERSON WOULD PREFER
 THE BLEAK PROSPECT OF INDIVIDUAL PERSONAL NEGOTIATIONS OF HIS CONDITIONS
 OF EMPLOYMENT WITH A CORPORATION? THERE IS NO EVIDENCE IN THIS CASE OF
 REPRESENTATIONS OR APPEARANCES TO SUGGEST THAT THERE ARE OBJECTING EM-
 PLOYEES OR OF ANY INTERVENING UNION CLAIMING AN INTEREST. EMPLOYEES
 MAY BE HIRED AT A FUTURE NEW LOCATION, IN SPITE OF THE RESPONDENT'S
 DECLARATION AGAINST EXPANDING ITS BUSINESS TO ANY AREA OTHER THAN THE
 PRESENT LOCATIONS, IN ADDITION TO THE POSSIBILITY OF THE LOCATION OF
 INDIVIDUAL EMPLOYEES AWAY FROM THE PRESENT LOCATIONS OF THE COMPANY.
 IF A NEW LOCATION WAS ESTABLISHED, THE EMPLOYEES THERE, UNDER THE
 COVER OF A PROVINCIAL CERTIFICATION, WOULD BE DENIED THE PREROGATIVE
 GUARANTEED BY S.3, THAT IT, THE RIGHT TO SELECT A UNION OF THEIR
 CHOICE. IT MAY BE IN THE BEST INTERESTS OF THESE EMPLOYEES AS YET
 UNHIRED, PERHAPS UNBORN, THAT MY COLLEAGUES HAVE DECIDED AGAINST A
 PROVINCE-WIDE UNIT. WITH RESPECT, I TAKE THE VIEW THAT THE BENEFITS
 PRE-ESTABLISHED BY A COLLECTIVE AGREEMENT WOULD OUTWEIGH THE PRIVI-
 LEGE UNDER S.3 OF -- ORGANIZING, ACQUIRING BARGAINING RIGHTS, NEGOTI-
 ATING A COLLECTIVE AGREEMENT, AND EVEN THEN POSSIBLY ENDING UP IN
 THE SAME UNION AS THE EMPLOYEES AT THE OTHER LOCATIONS AFTER ALL.

9. ON CAREFUL CONSIDERATION OF ALL OF THE EVIDENCE AND IN THE
 PARTICULAR CIRCUMSTANCES OF THIS CASE, AND ESPECIALLY IN THE ABSENCE
 OF ANY EMPLOYEE OBJECTORS AND INTERVENTION FROM ANY OTHER UNION, I
 SEE NO MISCHIEF OR VIOLENCE TO BOARD POLICY IN ACCEPTING THE AGREE-
 MENT OF THE PARTIES. I WOULD THEREFORE GRANT THE AGREED UPON PRO-
 VINCIAL-WIDE UNIT SOUGHT BY THE APPLICANT, AND I SO FIND.

466-71-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (COMPLAINANT) V. DODGE CONSTRUCTION COMPANY LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: FRANK MANONI FOR THE COMPLAINANT; I. H. MCGOWAN FOR THE RESPONDENT.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN AND BOARD MEMBER O. HODGES: AUGUST 9, 1971.

1. THE NAME "DODGE CONSTRUCTION COMPANY" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "DODGE CONSTRUCTION COMPANY LIMITED".

2. THIS IS A COMPLAINT MADE UNDER SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT ALLEGES THAT THE AGGRIEVED PERSON JIM CORDICK WAS PERMANENTLY LAID OFF BY THE RESPONDENT ON MAY 20, 1971, BECAUSE OF HIS UNION ACTIVITIES CONTRARY TO SECTION 50 OF THE ACT.

3. AT THE RELEVANT TIME THE RESPONDENT HAD THREE PROJECTS UNDER CONSTRUCTION IN THE PERTH AREA. MORE SPECIFICALLY, WORK WAS IN PROGRESS ON THE ONTARIO PROVINCIAL POLICE BUILDING, THE GREAT WAR MEMORIAL HOSPITAL AND THE WAMPOLE PLANT. THE RESPONDENT HAS BEEN EMPLOYING LABOURERS ON ALL OF THESE PROJECTS. THE COMPLAINANT AND THE RESPONDENT ARE PARTIES TO A COLLECTIVE AGREEMENT WHICH COVERS THE EMPLOYEES OF THE RESPONDENT WORKING ON THE ABOVE PROJECTS. THE DURATION CLAUSE OF THE AGREEMENT PROVIDES THAT THE AGREEMENT IS TO BE EFFECTIVE FROM JULY 14, 1969 TO APRIL 30, 1971 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE. IN MARCH OF THIS YEAR THE RESPONDENT GAVE NOTICE OF ITS DESIRE TO TERMINATE THE AGREEMENT AND THE COMPLAINANT GAVE NOTICE UNDER SECTION 40 OF THE ACT OF ITS DESIRE TO BARGAIN FOR THE RENEWAL OF THE AGREEMENT. NO NEW AGREEMENT, HOWEVER, HAD BEEN ENTERED INTO BY THE PARTIES AS OF THE DATE OF THE BOARD HEARING.

4. THERE HAD NOT BEEN COMPLIANCE WITH SOME OF THE TERMS AND CONDITIONS OF THE 1969 AGREEMENT. BY WAY OF EXAMPLE, THE UNION SECURITY CLAUSE PROVIDES THAT AS A CONDITION OF EMPLOYMENT ALL EMPLOYEES OF THE RESPONDENT MUST BECOME MEMBERS OF THE COMPLAINANT WITHIN THIRTY DAYS FROM THE DATE OF THEIR EMPLOYMENT. UNTIL MAY 14TH OF THIS YEAR AT LEAST SOME OF THE EMPLOYEES OF THE RESPONDENT WERE NOT MEMBERS OF THE COMPLAINANT UNION.

5. ON MONDAY, MAY 3, 1971, EDMOND HANSON, A SUPERINTENDENT IN THE EMPLOY OF THE RESPONDENT, ADVISED THE EMPLOYEES THAT AS OF MAY 1ST, THE EXPIRY DATE OF THE 1969 AGREEMENT, THEIR WAGE RATE WAS BEING RE-

DUCTED FROM \$3.38 TO \$2.50 PER HOUR. THE EMPLOYEES WERE NOT HAPPY WITH THIS DEVELOPMENT AND A NUMBER OF THEM ASKED CORDICK TO COMMUNICATE WITH THE COMPLAINANT AND ADVISE THE APPROPRIATE OFFICIALS OF THE ACTION TAKEN BY THE RESPONDENT. CORDICK DID SO. WE WOULD MENTION THAT ALTHOUGH IT WAS STATED AT THE OUTSET OF THE CASE THAT CORDICK WAS A SHOP STEWARD, NO EVIDENCE WAS ADDUCED AT THE HEARING WHICH CONFIRMED THIS STATEMENT.

6. IT WOULD APPEAR THAT AS A RESULT OF CORDICK'S ACTION, REPRESENTATIVES OF THE UNION DID COME TO THE JOB SITE OF THE HOSPITAL PROJECT AND SUBSEQUENTLY MET WITH MEMBERS OF MANAGEMENT OF THE RESPONDENT. IT WOULD APPEAR ALSO THAT THE OUTCOME OF THE MEETING BETWEEN THE COMPLAINANT AND THE RESPONDENT WAS THAT THE RESPONDENT AGREED TO RESTORE THE WAGE RATE OF \$3.38 PER HOUR AND TO PAY THE DIFFERENCE BETWEEN THAT RATE AND THE \$2.50 AN HOUR RATE TO ALL OF THE EMPLOYEES COVERING THE PERIOD BETWEEN MAY 1, 1971 AND MAY 14, 1971, THE DATE ON WHICH THE SETTLEMENT WAS REACHED.

7. ON TUESDAY, MAY 11, 1971, TONY FRANKS, A NON-WORKING FOREMAN AND A MEMBER OF MANAGEMENT OF THE RESPONDENT, PRESENTED A SHEET OF PAPER TO ALL OF THE EMPLOYEES WORKING ON THE HOSPITAL PROJECT AND TOLD THEM TO SIGN IT AND TO INDICATE WHETHER THEY WERE IN FAVOUR OR AGAINST THE COMPLAINANT UNION. AT THE SAME TIME, FRANKS ADVISED THE EMPLOYEES THAT IF THEY SIGNED THE PAPER IN FAVOUR OF THE UNION THEY WOULD BE OUT OF A JOB. CORDICK DECLINED TO SIGN THE PAPER. ACCORDING TO CORDICK, AT THAT POINT FRANKS SAID TO HIM "I KNOW YOU ARE A UNION MAN". ARNOLD BAKER, ANOTHER EMPLOYEE OF THE RESPONDENT TESTIFIED THAT ON MAY 11TH AND ON A NUMBER OF OCCASIONS FRANKS TOLD EMPLOYEES THAT CORDICK WAS A "UNION MAN" AND THAT "HE HAD TO GO". THE EVIDENCE OF RONALD McDougall who is also an employee of the respondent is that FRANKS TOLD EMPLOYEES THAT CORDICK WAS "SHOOTING HIS MOUTH OFF TOO MUCH ABOUT THE UNION". AT THE END OF THE DAY (MAY 11TH) CORDICK AND ANOTHER EMPLOYEE OF THE RESPONDENT NAMED SCHONAEUR WHO HAD SIGNED THE PAPER CIRCULATED BY FRANKS INDICATING HIS SUPPORT OF THE UNION, WERE LAID OFF. BOTH CORDICK AND SCHONAEUR WERE GIVEN NOTICES OF RECALL ON FRIDAY MAY 14TH. THE EVIDENCE INDICATED THAT THEIR RECALL FORMED PART OF THE SETTLEMENT MADE BETWEEN THE COMPLAINANT UNION AND THE RESPONDENT ON MAY 14TH.

8. CORDICK REPORTED FOR WORK AT THE HOSPITAL PROJECT ON MONDAY MORNING, MAY 17TH. FRANKS IMMEDIATELY SENT HIM TO WORK ON THE ONTARIO PROVINCIAL POLICE BUILDING. THIS PROJECT WAS THEN VIRTUALLY COMPLETED. CORDICK, HOWEVER, WAS PUT TO WORK LEVELLING THE PARKING AREA AND CONTINUED TO WORK ON THE SITE UNTIL THURSDAY MAY 20TH. AT APPROXIMATELY 3:00 P.M. ON THAT DAY, GEORGE MCCURDY, A FOREMAN EMPLOYED BY THE RESPONDENT, TOLD CORDICK TO GO BACK TO THE HOSPITAL PROJECT AND REPORT TO HANSON. CORDICK TESTIFIED THAT AS HE STARTED

TO LEAVE HE HEARD RONALD SMITH, THE GENERAL MANAGER OF THE RESPONDENT SAY TO MCCURDY THAT CORDICK COULD NOT GO TO THE HOSPITAL PROJECT. ACCORDING TO CORDICK, SMITH WENT ON TO SAY TO MCCURDY THAT CORDICK HAD BEEN SENT TO THE O.P.P. PROJECT FOR A PURPOSE. CORDICK'S EVIDENCE IS THAT MCCURDY THEREUPON CALLED HIM (CORDICK) BACK AND TOLD HIM THAT HE WAS LAID OFF. MCCURDY FURTHER ADVISED CORDICK THAT HE WOULD TELEPHONE HIM (CORDICK) ON MONDAY EVENING (MAY 24TH) IF THERE WAS WORK FOR HIM ON THE HOSPITAL PROJECT. MCCURDY AT NO TIME THEREAFTER COMMUNICATED WITH CORDICK.

9. BY LETTER DATED MAY 20, 1971, J. E. DODGE, AN OFFICER OF THE RESPONDENT ADVISED THE SOLICITORS FOR THE COMPLAINANT UNION THAT CORDICK AND ANOTHER EMPLOYEE WERE BACK TO WORK. THE LETTER READS IN PART:

"HOWEVER, AT THIS TIME I WANT IT CLEARLY UNDERSTOOD THAT THESE MEN WERE NOT "FIRED" FROM THE JOB BUT LAID OFF DUE TO SHORTAGE OF WORK. THEY WERE TAKEN BACK ON BECAUSE WE NEEDED MORE LABORERS ON OUR O.P.P. BUILDING IN PERTH. AS LONG AS WE REQUIRE LABORERS IN THIS AREA THEY WILL BE KEPT IN OUR EMPLOY; IF WE DO NOT HAVE SUFFICIENT WORK FOR THEM WE HAVE NO ALTERNATIVE BUT TO LAY THEM OFF UNTIL SUCH TIME AS THEY ARE REQUIRED."

CORDICK TESTIFIED AND HANSON ADMITTED IN CROSS-EXAMINATION, THAT SUBSEQUENT TO CORDICK BEING LAID OFF ON MAY 20TH, THE RESPONDENT HIRED TWO NEW EMPLOYEES WHO HAVE CONTINUED TO WORK FOR THE RESPONDENT. ACCORDING TO CORDICK, AS OF THE DAY PRIOR TO THE BOARD HEARING, THE TWO EMPLOYEES WERE WORKING ON THE WAMPOLE BUILDING PROJECT.

10. THE REPRESENTATIVE OF THE RESPONDENT SUBMITTED THAT CORDICK WAS LAID OFF ON MAY 20TH BECAUSE OF A LACK OF WORK. THE REPRESENTATIVE OF THE RESPONDENT ARGUED THAT THE RESPONDENT ONLY UNDERTOOK TO RECALL CORDICK IF THERE WAS WORK ON THE O.P.P. BUILDING AND IT WAS BECAUSE THERE WAS NO FURTHER WORK ON THAT PROJECT CORDICK HAD NOT BEEN RECALLED. THE REPRESENTATIVES OF THE RESPONDENT FURTHER SUBMITTED THAT THERE WAS EVIDENCE THAT THE RESPONDENT WAS AWARE THAT OTHER OF ITS EMPLOYEES HAD JOINED THE COMPLAINANT UNION YET THEY WERE NOT LAID OFF OR DISCHARGED. THE REPRESENTATIVE OF THE RESPONDENT FINALLY SUBMITTED THAT CONDUCT OF FRANKS WAS TAKEN INDEPENDENTLY AND WITHOUT THE AUTHORIZATION OR APPROVAL OF THE RESPONDENT, AND THAT ACCORDINGLY FRANKS ACTIONS COULD NOT BE ATTRIBUTED TO THE RESPONDENT.

11. IF MR. DODGE HAD INTENDED THE REFERENCE TO "THIS AREA" IN HIS LETTER OF MAY 20TH, TO MEAN THE O.P.P. BUILDING, ONE LOGICALLY WOULD HAVE EXPECTED HIM TO USE THE WORDS "THIS PROJECT". IN OUR VIEW THE MOST REASONABLE INTERPRETATION TO BE PLACED ON THE WORDS "THIS AREA" IS THAT IT MEANS THE PERTH AREA WHERE THE RESPONDENT CURRENTLY IS WORKING ON TWO OTHER CONSTRUCTION PROJECTS. WE ACCORDINGLY TOTALLY REJECT THE SUBMISSION OF THE REPRESENTATIVE OF THE RESPONDENT THAT THE RESPONDENT ONLY UNDERTOOK TO EMPLOY CORDICK WHILE THERE WAS WORK IN THE O.P.P. PROJECT.

12. THE EVIDENCE OF ARNOLD BAKER IS THAT HE JOINED THE COMPLAINANT UNION ON MAY 14TH UPON THE DIRECTION OF HANSON. HAVING REGARD TO THE DATE ON WHICH BAKER WAS INSTRUCTED TO JOIN THE UNION IT IS REASONABLE TO INFER THE COMPLAINANT WAS REQUIRING COMPLIANCE WITH THE UNION SECURITY PROVISION OF THE COLLECTIVE AGREEMENT AND THAT HANSON'S DIRECTION TO BAKER WAS PROMPTED BY THE UNION'S REQUIREMENT. IN THESE CIRCUMSTANCES IT DOES NOT NECESSARILY FOLLOW THAT SIMPLY BECAUSE THE RESPONDENT DID NOT LAY OFF OTHER EMPLOYEES WHO MANAGEMENT WAS AWARE HAD JOINED THE COMPLAINANT UNION, THAT THE RESPONDENT DID NOT LAY OFF CORDICK FOR HIS ACTIVITIES ON BEHALF OF THE UNION AS DISTINCT FROM HIS MEMBERSHIP IN THE UNION.

13. DEALING WITH THE LAST SUBMISSION OF THE REPRESENTATIVE OF THE RESPONDENT, IT MAY BE THAT MORE SENIOR MEMBERS OF MANAGEMENT DID NOT AUTHORIZE FRANKS EITHER TO CIRCULATE THE SHEET OF PAPER TO FIND OUT IF THE EMPLOYEES WERE FOR OR AGAINST THE COMPLAINANT UNION OR TO THREATEN THEM WITH THE LOSS OF THEIR JOBS IF THEY WERE SUPPORTERS OF THE UNION. HOWEVER, THE UNDISPUTED EVIDENCE OF CORDICK, WHICH IS CORROBORATED BY THAT OF BAKER, IS THAT FRANKS, APPARENTLY VERY VOCALLY, MADE IT CLEAR THAT HE WAS AWARE THAT CORDICK WAS A UNION SUPPORTER AND THAT BECAUSE OF THIS HE WOULD HAVE TO LEAVE THE EMPLOYMENT OF THE RESPONDENT. FURTHER IN ACTUAL FACT ON THE VERY DAY THAT FRANKS MADE THIS STATEMENT CORDICK WAS LAID OFF TOGETHER WITH SCHONAEUR WHO HAD SIGNED THE SHEET OF PAPER INDICATING HIS SUPPORT FOR THE COMPLAINANT UNION. THEY WERE GIVEN NOTICES OF RECALL ON MAY 14TH AS PART OF AN OVERALL SETTLEMENT AGREED UPON THAT DATE BY THE COMPLAINANT AND THE RESPONDENT. IN LIGHT OF THE ABOVE SEQUENCE OF EVENTS IT IS A REASONABLE INFERENCE THAT THE SENIOR MEMBERS OF MANAGEMENT AT LEAST AS OF MAY 14TH WERE FULLY APPRAISED OF THE ACTIVITIES OF FRANKS. IN ANY EVENT, THE RESPONDENT MUST ASSUME RESPONSIBILITY FOR THE CONDUCT OF FRANKS SINCE HIS ACTIONS CANNOT BE DESCRIBED AS BEING CLEARLY OUTSIDE THE SCOPE OF HIS AUTHORITY.

14. IT SEEMS MORE THAN A COINCIDENCE THAT WHEN CORDICK WAS RECALLED AND REPORTED ON THE MORNING OF MAY 17, HE WAS PUT TO WORK AT THE O.P.P. CONSTRUCTION SITE, A JOB WHICH WAS VIRTUALLY COMPLETED. THE EVIDENCE IS THAT MCCURDY TOLD CORDICK ON THE AFTERNOON OF MAY 20TH

TO REPORT FOR WORK AT THE HOSPITAL PROJECT. THIS DIRECTION WAS COUNTERMANDED BY SMITH, THE GENERAL MANAGER WHO MADE IT CLEAR THAT CORDICK WAS NOT TO BE ALLOWED TO RETURN TO THE HOSPITAL PROJECT. SMITH ALSO MADE IT CLEAR THAT CORDICK HAD BEEN PUT TO WORK ON THE O.P.P. BUILDING PROJECT FOR A PURPOSE. IT IS OUR CONCLUSION BASED ON THIS EVIDENCE THAT THE RESPONDENT WAS DETERMINED TO KEEP CORDICK APART FROM THE OTHER EMPLOYEES IN ORDER TO PREVENT HIM FROM INFLUENCING THE OTHER EMPLOYEES TO SUPPORT THE COMPLAINANT UNION. OUR CONCLUSION IS SUPPORTED BY THE FACT THAT CORDICK WAS IMMEDIATELY "LAID OFF" AND HAS NOT BEEN RECALLED. TWO NEW EMPLOYEES, HOWEVER, WERE HIRED AND ARE STILL WORKING FOR THE RESPONDENT.

15. IT WAS OPEN TO THE RESPONDENT TO CALL EVIDENCE TO REFUTE THAT ADDUCED BY THE COMPLAINANT OR TO CALL EVIDENCE WHICH PROVIDED SOME EXPLANATION FOR THE RESPONDENT'S CONDUCT IN RELATION TO CORDICK. NO SUCH EVIDENCE WAS CALLED BY THE RESPONDENT. THE BOARD THEREFORE IS CONFRONTED WITH THE FACT THAT CORDICK WAS "LAID OFF" ON MAY 20TH, IN CIRCUMSTANCES THAT DEFINITELY CALLED FOR AN EXPLANATION. IN THE RESULT, THE BOARD FINDS ITSELF IMPELLED TO CONCLUDE THAT CORDICK IN EFFECT, WAS DISCHARGED FOR CALLING IN THE COMPLAINANT UNION ON BEHALF OF THE EMPLOYEES WHEN THEIR WAGES WERE REDUCED AND FOR HIS OPEN SUPPORT FOR THE UNION, CONTRARY TO SECTION 50 OF THE ACT.

16. THE BOARD DIRECTS THAT THE RESPONDENT REINSTATE JIM CORDICK IN THE SAME OR A LIKE POSITION AS HE HELD ON THE DATE OF HIS DISCHARGE ON MAY 20, 1971. THE BOARD FURTHER DIRECTS THAT THE RESPONDENT PAY TO JIM CORDICK AS COMPENSATION FOR LOSS OF WAGES FROM MAY 20, 1971 TO JULY 23, 1971 THE SUM OF \$1,050.00.

17. THE PARTIES SHALL MEET FORTHWITH TO AGREE UPON THE AMOUNT OF LOSS OF EARNINGS, IF ANY, SUSTAINED BY JIM CORDICK BETWEEN JULY 23, 1971 AND THE DATE OF HIS ACTUAL REINSTATEMENT BY THE RESPONDENT. IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES WITHIN 7 DAYS AFTER THE RELEASE OF THIS DECISION OR WITHIN SUCH FURTHER PERIODS AS THE PARTIES MAY MUTUALLY AGREE UPON, THE AMOUNT OF ANY SUCH FURTHER COMPENSATIONS PAYABLE, IF ANY, WILL BE DETERMINED BY THE BOARD UPON THE MOTION OF EITHER PARTY FOR A FURTHER HEARING FOR THAT PURPOSE.

DECISION OF BOARD MEMBER J. D. BELL: AUGUST 9, 1971.

1. I DO NOT AGREE WITH THE CONCLUSIONS OF THE MAJORITY OF THE BOARD.

2. THE EVIDENCE CLEARLY INDICATED THAT THE OUTSTANDING ISSUES BETWEEN THE COMPLAINANT UNION AND THE RESPONDENT, INCLUDING THE RECALL OF CORDICK AND SCHONAEUR, WERE SETTLED ON MAY 14TH.

3. I DO NOT CONSTRUE THE SUBSEQUENT LAYOFF OF CORDICK ON MAY 20TH DUE TO LACK OF WORK ON THE O.P.P. BUILDING PROJECT AS A DISCHARGE CONTRARY TO SECTION 50 OF THE ACT.

4. THEREFORE I WOULD DISMISS THE COMPLAINT.

222-71-M: SOCIETY OF ONTARIO HYDRO PROFESSIONAL ENGINEERS AND ASSOCIATES (TRADE UNION) V. HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (EMPLOYER).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS P.J. O'KEEFFE AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: AUBREY E. GOLDEN AND R. VAL SCOTT FOR THE TRADE UNION; B.H. STEWART, GORDON MCHENRY, JACK WALKER AND H. ROSSMAN FOR THE EMPLOYER.

DECISION OF THE BOARD: AUGUST 23, 1971.

1. THIS IS A REFERENCE BY THE MINISTER TO THE ONTARIO LABOUR RELATIONS BOARD PURSUANT TO SECTION 79A OF THE ACT AND THE ISSUE IS WHETHER THE MINISTER OF LABOUR HAS THE AUTHORITY UNDER THE LABOUR RELATIONS ACT TO APPOINT A CONCILIATION OFFICER. THE APPLICANT WHICH PURPORTS TO BE A TRADE UNION HAS REQUESTED THAT THE MINISTER APPOINT A CONCILIATION OFFICER UNDER SECTION 13 OF THE ACT AND MORE PARTICULARLY SECTION 13(3).

2. THE BACKGROUND TO THIS APPLICATION IS AS FOLLOWS: ON JUNE 28, 1947 HYDRO ELECTRIC POWER COMMISSION UNIT NO. 1 FEDERATION OF EMPLOYEE-PROFESSIONAL ENGINEERS AND ASSISTANTS WAS CERTIFIED BY THIS BOARD AS THE BARGAINING REPRESENTATIVE FOR "ALL PERSONS ENGAGED IN THE PRACTICE OF PROFESSIONAL ENGINEERING AS THAT TERM IS DEFINED IN THE PROFESSIONAL ENGINEERS ACT, R.S.O. 1937, CHAPTER 237, WHO ARE IN THE EMPLOY OF THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO AND WHO COME WITHIN THE DEFINITION OF "EMPLOYEE" IN THE REGULATIONS,...". WHILE CERTAIN PERSONS WERE CERTIFIED AS BARGAINING REPRESENTATIVES ON THAT OCCASION THE TRADE UNION BECAME THE BARGAINING AGENT AS A RESULT OF SUBSEQUENT LEGISLATION. THE LABOUR RELATIONS ACT, 1948 SECTION 11(1). THE APPLICANT SUBMITS THAT IT IS THE SUCCESSOR TO THE TRADE UNION WHICH HELD BARGAINING RIGHTS.

3. SUBSEQUENT AMENDMENTS TO THE LABOUR RELATIONS ACT REMOVED PROFESSIONAL ENGINEERS FROM THE PURVIEW OF THE ACT AND THE RECOGNITION WHICH AROSE AS A RESULT OF THE CERTIFICATION BY THE BOARD IN 1947 WAS WITHDRAWN BY THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (HEREINAFTER REFERRED TO AS HYDRO). HOWEVER, ON SEPTEMBER 28, 1961

THE PARTIES TO THIS APPLICATION ENTERED INTO A LETTER OF UNDERSTANDING WHICH PROVIDES INTER ALIA:

1. MANAGEMENT RECOGNIZES THE SOCIETY AS THE REPRESENTATIVE BODY FOR ALL PROFESSIONAL ENGINEERS AND SCIENTISTS OF ONTARIO HYDRO FROM MP1 TO MP6 INCLUSIVE WHO ARE MEMBERS OF THE SOCIETY EXCEPT THOSE EMPLOYED IN A CONFIDENTIAL CAPACITY.
2. IT IS THE DESIRE AND INTENT OF MANAGEMENT AND THE SOCIETY TO CO-OPERATE IN THE EARLY DEVELOPMENT OF A SYSTEM FOR SETTLING ANY AND ALL POINTS OF DISAGREEMENT BETWEEN THEM. IT IS MUTUALLY RECOGNIZED THAT FOR OPTIMUM EFFECTIVENESS SUCH A SYSTEM MUST IN GENERAL ENSURE FOR SOCIETY MEMBERS TREATMENT COMPARABLE WITH THAT ENJOYED BY THE MEMBERS OF CERTIFIED BARGAINING AGENTS RECOGNIZED BY THE COMMISSION.
3. PENDING THE DEVELOPMENT OF THE SYSTEM REFERRED TO IN ITEM 6, MANAGEMENT UNDERTAKES NOT TO ALTER WORKING CONDITIONS OF SOCIETY MEMBERS WITHOUT PRIOR CONSULTATION IN THE JOINT SOCIETY-MANAGEMENT COMMITTEE OR WITH THE EXECUTIVE OF THE SOCIETY.
4. PURSUANT TO THE LETTER OF UNDERSTANDING THE PARTIES ENTERED INTO VARIOUS ARRANGEMENTS CONCERNING WAGES AND OTHER WORKING CONDITIONS, WHICH ARE SIMILAR TO ARRANGEMENTS ENTERED INTO BETWEEN TRADE UNIONS AND EMPLOYERS. IN FEBRUARY, 1971, PURSUANT TO THE LABOUR RELATIONS AMENDMENT ACT, R.S.O. 1970, CHAPTER 85, PROFESSIONAL ENGINEERS WERE AGAIN INCLUDED WITHIN THE SCOPE OF THE LABOUR RELATIONS ACT. A PROFESSIONAL ENGINEER IS DEFINED UNDER SECTION 1(HA) AS FOLLOWS:
 - 1.-(HA) "PROFESSIONAL ENGINEER" MEANS AN EMPLOYEE WHO IS A MEMBER OF THE ENGINEERING PROFESSION ENTITLED TO PRACTICE IN ONTARIO AND EMPLOYED IN A PROFESSIONAL CAPACITY.

SINCE PROFESSIONAL ENGINEERS ARE NOW WITHIN THE SCOPE OF THE LABOUR RELATIONS ACT THE APPLICANT SEEKS TO INVOKE THE ACT AND OBTAIN CONCILIATION UNDER SECTION 13(3) OF THE ACT WHICH PROVIDES AS FOLLOWS:

- 13.-(3) WHERE AN EMPLOYER AND A TRADE UNION AGREE THAT THE EMPLOYER RECOGNIZES THE TRADE UNION AS THE EXCLUSIVE BARGAINING AGENT OF

THE EMPLOYEES IN A DEFINED BARGAINING UNIT AND THE AGREEMENT IS IN WRITING SIGNED BY THE PARTIES, THE MINISTER MAY, UPON THE REQUEST OF EITHER PARTY, APPOINT A CONCILIATION OFFICER TO CONFER WITH THE PARTIES AND ENDEAVOUR TO EFFECT A COLLECTIVE AGREEMENT.

5. THE APPLICANT SUBMITTED THAT AS A RESULT OF THE LETTER OF UNDERSTANDING IT WAS RECOGNIZED AS A TRADE UNION AND ENTITLED TO THE BENEFIT OF SECTION 13(3). HYDRO RESISTED THE APPLICATION ON THE BASIS INTER ALIA:

- 1) THAT THE APPLICANT WAS NOT AT ANY TIME A TRADE UNION;
- 2) THAT THERE WAS NOT A COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE APPLICANT AND THE EMPLOYER;
- 3) THAT THE APPLICANT DID NOT REPRESENT OR WAS NOT ENTITLED TO REPRESENT PERSONS IN THE UNIT FOR WHICH THIS APPLICATION IS MADE.

WHILE A NUMBER OF SUBMISSIONS WERE MADE CONCERNING THE RETROSPECTIVE EFFECT OF THE LABOUR RELATIONS ACT AND THE NATURE OF THE PURPORTED BARGAINING UNIT WE ARE OF THE OPINION THAT THE FIRST OBJECTION RAISED BY HYDRO RESPECTING THIS APPLICATION IS VALID, AND WE DO NOT PROPOSE TO DEAL WITH THE REMAINING SUBMISSIONS.

6. IN ORDER TO AVAIL ITSELF OF SECTION 13(3) THE APPLICANT MUST SHOW THAT IT IS A TRADE UNION. SECTION 13(3) PRESUMES THAT THERE IS AN AGREEMENT BETWEEN AN EMPLOYER AND A TRADE UNION. A TRADE UNION IS DEFINED IN SECTION 1(1)(J) AS "AN ORGANIZATION OF EMPLOYEES". THE STATUS OF THE APPLICANT AS A TRADE UNION WAS CHALLENGED ON THE BASIS THAT THE APPLICANT INCLUDED IN ITS MEMBERSHIP A NUMBER OF PERSONS WHO WERE MANAGERIAL AND COULD NOT QUALIFY AS "AN ORGANIZATION OF EMPLOYEES". MR. VAL SCOTT THE GENERAL MANGER OF THE APPLICANT FOR THE PAST TWELVE YEARS TESTIFIED ABOUT THE MEMBERSHIP OF THE APPLICANT. WE WERE IMPRESSED WITH THE CANDID AND FORTHRIGHT MANNER IN WHICH HE GAVE HIS EVIDENCE. HE INDICATED THAT THERE ARE AT LEAST SIXTY-FIVE PERSONS IN THE ORGANIZATION WHO ARE CONSIDERED TO BE MANAGERIAL AND ARE MEMBERS OF MANAGEMENT AND THAT THERE ARE ALSO OTHER MEMBERS WHO PERFORM MANAGERIAL FUNCTIONS. HE FURTHER TESTIFIED THAT THESE PEOPLE ARE DUES PAYING MEMBERS OF THE ORGANIZATION WHO ASSOCIATE WITH THE ORGANIZATION IN SUPPORT OF ITS INTERESTS AS PROFESSIONAL ENGINEERS. HE ATTEMPTED TO CLARIFY THE APPLICANT'S

POSITION BY INDICATING THAT THE MANAGERIAL MEMBERS DO NOT HAVE A PART TO PLAY WITH RESPECT TO BARGAINING FOR WAGES OR WORKING CONDITIONS. DURING RE-EXAMINATION BY THE APPLICANT'S COUNSEL MR. SCOTT CANDIDLY STATED THAT AS A RESULT OF THE MEMBERSHIP OF THESE MANAGERIAL PEOPLE THERE DID EXIST "A POTENTIAL FOR CONFLICT OF INTEREST". AGAIN, HE INDICATED THAT THIS HAD NOT BEEN A PROBLEM.

7. THIS BOARD OVER THE YEARS HAS REFUSED TO GIVE STATUS TO PURPORTED TRADE UNIONS ON THE BASIS THAT MEMBERS OF MANAGEMENT ARE OR HAVE BEEN INVOLVED IN ITS ORGANIZATION. THERE ARE MANY CASES ON THAT POINT. THE WHOLE SPIRIT OF THE LABOUR RELATIONS ACT IS TO PROVIDE TRADE UNIONS WITH A SEPARATE AND DISTINCT IDENTITY FROM MANAGEMENT IN ORDER TO MAINTAIN THEIR INTEGRITY IN DEALING WITH MANAGEMENT. SEE E.G. SECTION 10, SECTION 13(B) AND SECTION 48. INDEED, SECTION 48 MAKES IT AN UNFAIR LABOUR PRACTICE FOR MANAGEMENT TO INVOLVE ITSELF IN CERTAIN TRADE UNION AFFAIRS. THE SPIRIT OF THE LEGISLATION AND THE CASES BEFORE THIS BOARD WHICH HAVE INVOKED THAT SPIRIT RESULTED BECAUSE OF THE POTENTIAL FOR A CONFLICT OF INTEREST WITH RESPECT TO CERTAIN ISSUES IN COLLECTIVE BARGAINING. THAT IS NOT TO SAY THAT CO-OPERATIVE AND HARMONIOUS RELATIONS DO NOT EXIST BETWEEN EMPLOYERS AND TRADE UNIONS. BUT IT DOES CONSIDER THAT ON OCCASION THERE WILL BE ISSUES WHERE RELATIONSHIPS MUST BE MAINTAINED AT ARMS LENGTH. TO THIS END THE LEGISLATURE HAS REQUIRED THAT TRADE UNIONS BE FREE FROM ANY TYPE OF MANAGEMENT INVOLVEMENT. THE "POTENTIAL FOR CONFLICT OF INTEREST" WHICH MR. SCOTT ADMITS EXISTS IN HIS ORGANIZATION IS PRECISELY THE PROBLEM THAT THE LEGISLATION HAS ATTEMPTED TO RESOLVE BY REQUIRING THAT TRADE UNIONS BE SEPARATED FROM MANAGEMENT. WE PAUSE TO NOTE THAT EVEN THE ORIGINAL CERTIFICATE OBTAINED IN 1947 WAS RESTRICTED TO PROFESSIONAL ENGINEERS WHO WERE "EMPLOYEES". ON THE BASIS OF THE EVIDENCE BEFORE US WE HAVE NO ALTERNATIVE BUT TO FIND THAT THE APPLICANT IS NOT AN ORGANIZATION OF EMPLOYEES BUT IS AN ORGANIZATION OF BOTH EMPLOYEES AND PERSONS EXERCISING MANAGERIAL FUNCTIONS AND ACCORDINGLY IT DOES NOT COME WITHIN THE DEFINITION OF A TRADE UNION CONTAINED IN THE ACT.

8. OUR DECISION DOES NOT MEAN THAT BONA FIDE BARGAINING HAS NOT TAKEN PLACE BETWEEN THE PARTIES WITH RESPECT TO WAGES AND WORKING CONDITIONS OR THAT BONA FIDE BARGAINING COULD NOT TAKE PLACE IN THE FUTURE. OUR CONCERN IS WITH THE "POTENTIAL FOR CONFLICT". WE ALSO RECOGNIZE THAT THE PARTIES MAY VOLUNTARILY AGREE TO BARGAIN COLLECTIVELY FOR MANAGERIAL PERSONS AND WHILE CERTAIN OTHER LEGISLATION HAS RECOGNIZED THAT MANAGERIAL PERSONS ARE APPROPRIATE FOR COLLECTIVE BARGAINING THERE IS NO SUCH LEGISLATION IN THIS PROVINCE AND THIS BOARD DOES NOT HAVE THE JURISDICTION TO GO BEYOND THE TERMS OF THE LEGISLATION AS IT PRESENTLY EXISTS.

9. DURING ARGUMENT COUNSEL FOR THE APPLICANT SUGGESTED THAT THE DEFINITION OF BARGAINING UNITS FOR PROFESSIONAL ENGINEERS AND THE

MANAGERIAL EXCLUSIONS MAY REQUIRE A DIFFERENT APPROACH FROM THE ONE THE BOARD HAS EXERCISED IN THE PAST BECAUSE OF THE PROFESSIONAL NATURE OF ENGINEERS, AND THE NATURE AND TYPE OF WORK THAT THEY PERFORM. BE THAT AS IT MAY, IT DOES NOT IN ANY WAY DEROGATE FROM MR. SCOTT'S EVIDENCE IN THIS CASE. WE WISH TO FURTHER INDICATE THAT THIS DECISION IS BASED ON THE PARTICULAR CIRCUMSTANCES AND IS NOT TO BE TAKEN AS INDICATING THE CONSIDERATIONS THAT THIS BOARD WILL GIVE IN DEFINING BARGAINING UNITS COMPOSED OF PROFESSIONAL ENGINEERS. SUFFICE IT TO SAY THAT THIS BOARD HAS DEALT WITH PERSONS ENGAGED IN A PROFESSIONAL CAPACITY SUCH AS NURSES, AND THE THRUST OF CASES DEFINING BARGAINING UNITS HAS BEEN SUCH THAT THE BOARD HAS CONSIDERED THE PARTICULAR FACTS AND THE NATURE OF THE EXISTING RELATIONSHIPS, AND HAS ATTEMPTED TO DEFINE THE BARGAINING UNITS AND THEIR EXCLUSIONS IN A REALISTIC SENSE CONSIDERING THE COMPLEXITY OF MODERN PROBLEMS FACING EMPLOYERS AND EMPLOYEES. IN AN APPROPRIATE CASE THE BOARD WILL CONSIDER THE PARTICULAR PROBLEMS THAT ARISE BECAUSE OF THE NATURE AND TYPE OF WORK PERFORMED BY PROFESSIONAL ENGINEERS AND THE RELATIONSHIPS THAT ARISE BECAUSE OF THAT WORK. BUT THAT IS NOT THE ISSUE IN THIS CASE.

10. IN THE RESULT WE ARE OF THE OPINION THAT THE APPLICANT IS NOT A TRADE UNION AND ACCORDINGLY SECTION 13(3) IS NOT APPLICABLE TO THE RELATIONSHIP BETWEEN THE PARTIES, AND WE RESPECTFULLY ADVISE THE MINISTER THAT IN OUR VIEW HE HAS NO AUTHORITY UNDER THE LABOUR RELATIONS ACT TO APPOINT A CONCILIATION OFFICER.

131-70-M: RALPH TERPSTRA (APPLICANT) V. THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL UNION NO. 1065 (RESPONDENT TRADE UNION) V. JOSEPH BRANT MEMORIAL HOSPITAL OF THE BURLINGTON-NELSON HOSPITAL (RESPONDENT EMPLOYER).

BEFORE: G.W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: W. R. HERRIDGE, Q.C., AND R.D. PECK FOR THE APPLICANT; S. SIMPSON AND S. PATERSON FOR THE RESPONDENT TRADE UNION; AND NO ONE APPEARING FOR THE RESPONDENT EMPLOYER.

DECISION OF G. W. REED, Q.C. CHAIRMAN, AND BOARD MEMBER F. W. MURRAY: AUGUST 4, 1971.

1. THIS IS AN APPLICATION BY RALPH TERPSTRA UNDER SECTION 35A(1) OF THE LABOUR RELATIONS ACT FOR AN ORDER BY THE BOARD THAT ARTICLES 6.4 AND 6.5 OF THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT TRADE UNION, HEREINAFTER REFERRED TO AS "CUPE", AND THE RESPONDENT EMPLOYER, HEREINAFTER REFERRED TO AS "THE HOSPITAL", MADE THE 14TH DAY OF JANUARY, 1971, AND PURPORTING TO REMAIN IN FORCE AND IN EFFECT UNTIL SEP-

TEMBER 14TH, 1971, DO NOT APPLY TO TERPSTRA AND THAT HE IS NOT REQUIRED TO PAY ANY FEES, DUES OR OTHER ASSESSMENTS TO CUPE. IN THIS CASE THE APPLICANT IS NOT SEEKING AN ORDER THAT HE IS NOT REQUIRED TO JOIN CUPE BECAUSE HE IS NOT SO OBLIGATED UNDER THE TERMS OF THE COLLECTIVE AGREEMENT.

2. SECTION 35A PROVIDES AS FOLLOWS:

(1) WHERE THE BOARD IS SATISFIED THAT AN EMPLOYEE BECAUSE OF HIS RELIGIOUS CONVICTION OR BELIEF,

(A) OBJECTS TO JOINING A TRADE UNION; OR

(B) OBJECTS TO THE PAYING OF DUES OR OTHER ASSESSMENTS TO A TRADE UNION,

THE BOARD MAY ORDER THAT THE PROVISIONS OF A COLLECTIVE AGREEMENT OF THE TYPE MENTIONED IN CLAUSE "A" OF SUBSECTION 1 OF SECTION 35 DO NOT APPLY TO SUCH EMPLOYEE AND THAT THE EMPLOYEE IS NOT REQUIRED TO JOIN THE TRADE UNION, TO BE OR CONTINUE TO BE A MEMBER OF THE TRADE UNION, OR TO PAY ANY DUES, FEES OR ASSESSMENTS TO THE TRADE UNION, PROVIDED THAT AMOUNTS EQUAL TO ANY INITIATION FEES, DUES OR OTHER ASSESSMENTS ARE PAID BY THE EMPLOYEE TO OR ARE REMITTED BY THE EMPLOYER TO A CHARITABLE ORGANIZATION MUTUALLY AGREED UPON BY THE EMPLOYEE AND THE TRADE UNION, BUT IF THE EMPLOYEE AND THE TRADE UNION FAIL TO SO AGREE THEN TO SUCH CHARITABLE ORGANIZATION REGISTERED AS A CHARITABLE ORGANIZATION IN CANADA UNDER PART I OF THE INCOME TAX ACT (CANADA) AS MAY BE DESIGNATED BY THE BOARD.

(A) SUBJECT TO CLAUSE "B", TO EMPLOYEES IN THE EMPLOY OF AN EMPLOYER AT THE TIME A COLLECTIVE AGREEMENT CONTAINING A PROVISION OF THE KIND MENTIONED IN SUBSECTION 1 IS FIRST ENTERED INTO WITH THAT EMPLOYER AND ONLY DURING THE LIFE OF SUCH COLLECTIVE AGREEMENT; AND

(B) WHERE A COLLECTIVE AGREEMENT IN FORCE WHEN THIS SUBSECTION COMES INTO FORCE CONTAINS THE PROVISIONS MENTIONED IN SUBSECTION 1, TO EMPLOYEES IN THE EMPLOY OF THE EMPLOYER AT THE TIME THIS SECTION COMES INTO FORCE AND ONLY DURING THE LIFE OF SUCH COLLECTIVE AGREEMENT,

AND DOES NOT APPLY TO EMPLOYEES WHOSE EMPLOYMENT COMMENCES AFTER THE ENTERING INTO OF THE COLLECTIVE AGREEMENT WHEN CLAUSE "A" APPLIES, OR AFTER THIS SECTION COMES INTO FORCE, WHEN CLAUSE "B" APPLIES.

3. SECTION 35A WAS ENACTED BY S.O. 1970, c. 85, s. 14, WHICH COME INTO FORCE ON FEBRUARY 15, 1971 BY PROCLAMATION. ON THAT DATE TERPSTRA WAS AN EMPLOYEE OF THE HOSPITAL, WAS IN THE BARGAINING UNIT DESCRIBED IN THE ABOVE-NOTED COLLECTIVE AGREEMENT AND WAS BOUND BY ITS TERMS AND CONDITIONS. THE AGREEMENT WAS IN FORCE ON FEBRUARY 15, 1971. ARTICLES 6.4 AND 6.5 OF THE AGREEMENT ARE OF THE TYPE MENTIONED IN CLAUSE (A) OF SUBSECTION 1 OF SECTION 35 OF THE LABOUR RELATIONS ACT IN THAT THEY REQUIRE, INTER ALIA, THE PAYMENT OF DUES OR CONTRIBUTIONS TO CUPE AS A CONDITION OF EMPLOYMENT. CLEARLY, THEREFORE, TERPSTRA IS AN EMPLOYEE TO WHOM SECTION 35A(1) APPLIES.

4. THE EVIDENCE ESTABLISHES THAT TERPSTRA WAS BORN IN HOLLAND WHERE HE ATTENDED A CHRISTIAN ELEMENTARY SCHOOL, THAT IS, A PARENTAL SCHOOL FOUNDED ON THE BIBLE AND CONTROLLED BY PARENTS AND NOT BY THE STATE. HE EMIGRATED TO CANADA IN 1952 AND AFTER A SOMEWHAT VARIED EMPLOYMENT HISTORY OBTAINED EMPLOYMENT WITH THE HOSPITAL AS A MAINTENANCE CARPENTER FIVE YEARS AGO. HE IS MARRIED AND HAS FIVE CHILDREN. HE IS A MEMBER OF THE CANADIAN REFORMED CHURCH OF BURLINGTON EAST. HE HAS SERVED BOTH AS A DEACON AND AN ELDER OF HIS CHURCH, WHICH HE NORMALLY ATTENDS TWICE ON SUNDAY. HE IS A MEMBER OF AN EVANGELIC COMMITTEE OF THE CHURCH. TWO OF HIS CHILDREN ATTEND A CHRISTIAN PARENTAL SCHOOL WHILE TWO OTHERS ARE IN A PUBLIC HIGH SCHOOL. TERPSTRA TESTIFIED THAT HE DOES NOT HAVE THE FINANCIAL RESOURCES TO PERMIT HIS OLDER CHILDREN TO ATTEND THE CHRISTIAN PARENTAL HIGH SCHOOL LOCATED IN HAMILTON. HIS ANNUAL FINANCIAL CONTRIBUTIONS TO HIS CHURCH AND TO THE SCHOOL ARE IN EXCESS OF \$800 A YEAR.

5. TERPSTRA'S EVIDENCE WITH RESPECT TO THE REASON FOR THIS APPLICATION WAS AS FOLLOWS: HE BELIEVES GOD PUT HIM IN HIS PRESENT POSITION WHERE HE WAS TO SERVE GOD AND FURTHER HIS CAUSE IN EVERYTHING HE DID AND TO THE UTMOST OF HIS ABILITY. TERPSTRA'S RELIGION IS THE SERVICE OF GOD ACCORDING TO HIS WORD AND COMMAND AS REVEALED IN THE BIBLE AND JESUS CHRIST. IN TERPSTRA'S VIEW, IT IS AGAINST GOD'S COMMAND TO JOIN AN ORGANIZATION OR PAY DUES TO IT IF THAT ORGANIZATION IS NOT SIMILARLY COMMITTEE -- BOTH IN ITS CONSTITUTION AND DAILY ACTIVITIES. TERPSTRA BELIEVES THAT AN ORGANIZATION OR PERSON CANNOT BE NEUTRAL. THEY ARE EITHER FOR OR AGAINST CHRIST. IN TERPSTRA'S VIEW, UNLESS GOOD WORKS ARE DONE IN THE NAME OF GOD, THEY HAVE NO ETERNAL VALUE. MATERIAL THINGS ARE ONLY FOR THIS LIFE. BUT THIS IS ONLY A SHORT PART OF HIS LIFE. HE IS WORKING FOR THE FUTURE, FOR THE REAL LIFE TO COME. CUPE'S CONSTITUTION DOES NOT STATE ANY-

THING ABOUT GOD BUT INSTEAD, IN TERPSTRA'S VIEW, IS COMPLETELY NEUTRAL AND MATERIALISTIC IN ITS OUTLOOK. HE TESTIFIED THAT HE COULD NOT JOIN SUCH AN ORGANIZATION OR PAY DUES TO IT BECAUSE, IN SO DOING, IN WOULD BECOME CO-RESPONSIBLE FOR ITS DEEDS AND ACTIVITIES. AS AN EXAMPLE OF ACTIVITIES TO WHICH TERPSTRA OBJECTED, HE REFERRED TO THE CASE OF TWO OF THE MEMBERS OF HIS CHURCH WHO WERE FIRED BY THE HALTON COUNTY BOARD OF EDUCATION BECAUSE THEY REFUSED TO SIGN DUES DEDUCTION CARDS. ALTHOUGH THE SIGNING OF SUCH CARDS WAS AGAINST THEIR PRINCIPLES, CUPE, IN TERPSTRA'S VIEW, MADE NO ATTEMPT TO ACCOMMODATE THEM. HE TESTIFIED FURTHER THAT IF HE COULD NOT OBTAIN AN EXEMPTION FROM PAYING DUES, HE WOULD PROTEST TO MANAGEMENT THAT HE WOULD NOT PAY DUES. HE WOULD BE FIRED AND HE WOULD FIND ANOTHER JOB. HE BELIEVES THAT GOD WILL TAKE CARE OF HIM.

6. TERPSTRA FIRST REGISTERED HIS OPPOSITION TO CUPE IN A LETTER, DATED APRIL 24, 1967, ADDRESSED TO THE MANAGEMENT OF THE HOSPITAL (EXHIBIT 4). THIS LETTER WAS PROMPTED BY THE FACT THAT THOSE SIGNING IT UNDERSTOOD THAT CUPE WAS SOON TO BE CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE HOSPITAL AND ITS PURPOSE WAS TO URGE THE HOSPITAL NOT TO AGREE TO UNION SECURITY PROVISIONS DURING BARGAINING WITH CUPE. THE LETTER WAS PREPARED ON TERPSTRA'S AND ONE OTHER EMPLOYEE'S INSTRUCTIONS BY THE COMMITTEE FOR JUSTICE AND LIBERTY AND WAS SIGNED BY TERPSTRA AND THE OTHER EMPLOYEE. THE LETTER READS IN PART AS FOLLOWS:

WE ARE OPPOSED TO THE UNION AND ITS AFFILIATION WITH THE SOCIALIST, NDP-SUPPORTING CANADIAN LABOUR CONGRESS. OUR OPPOSITION STEMS FROM THE FACT THAT THE CLC AND ITS AFFILIATES, INCLUDING THE CANADIAN UNION OF PUBLIC EMPLOYEES, IN THEIR PRINCIPLES AND PRACTICES, FAIL TO ADHERE TO THE BIBLICAL PRINCIPLES THAT WE FEEL SHOULD GOVERN LABOUR RELATIONS.

* * *

IN VIEW OF OUR SERIOUS AND WEIGHTY OBJECTIONS TO THE UNION, BASED ON CHRISTIAN CONVICTION, WE HEREBY ADVISE YOU THAT WE STRONGLY OBJECT TO JOINING OR SUPPORTING THE CANADIAN UNION OF PUBLIC EMPLOYEES. WE SINCERELY HOPE THAT YOU WILL GIVE DUE CONSIDERATION TO OUR VALID OBJECTIONS AND THAT YOU WILL NOT GIVE IN TO THE UNION'S DEMAND THAT ALL PRESENT OR FUTURE EMPLOYEES JOIN OR FINANCIALLY SUPPORT IT AS A CONDITION OF EMPLOYMENT. AS PROOF OF GOOD FAITH IN THE MATTER, WE ADVISE YOU THAT WE ARE QUITE WILLING TO CONTRIBUTE THE EQUIVALENT OF DUES TO THE CHARITABLE ORGANIZATION OF OUR CHOICE, FOR EXAMPLE THE RED CROSS.

7. SUBSEQUENTLY, IN THE FALL OF 1970, TERPSTRA WROTE TO THE C. J. L. FOUNDATION, APPARENTLY IN CONNECTION WITH THE PASSAGE IN THE LEGISLATURE OF THE AMENDMENTS TO THE LABOUR RELATIONS ACT, INCLUDING SECTION 35A. THIS LETTER (EXHIBIT 3) READS AS FOLLOWS:

IN RESPONSE TO YOUR NEWSLETTER DATED NOV. 17 1970 I WOULD APPRECIATE YOUR COMMENTS AND ADVICE ON THE FOLLOWING:

I AM EMPLOYED AS A MAINTENANCE CARPENTER IN THE JOSEPH BRANT MEMORIAL HOSPITAL IN BURLINGTON AND HAVE PREVIOUSLY ASKED FOR YOUR ADVICE IN THIS MATTER. C.U.P.E. HAS A CONTRACT WITH THE HOSPITAL AND THE CONTRACT EXPIRES ON THE END OF NOVEMBER.

BY THE GRACE OF GOD AND TROUGH YOUR GOOD OFFICES I WAS ALLOWED TO STAY OUT OF THIS UNION AND ALSO AM EXEMPT FROM PAYING DUES DURING THIS LATEST CONTRACT. COULD YOU INFORM ME HOW THIS SO CALLED CHARITY CLAUSE WILL AFFECT ME IN THIS GIVEN SITUATION?

DO I HAVE TO APPLY TO THE LABOUR BOARD OR IS THIS NOT NECESSARY IN MY CASE.

WISHING YOU THE LORD'S BLESSING AND GUIDANCE ON YOUR VITAL WORK AND HOPING TO HEAR FROM SOON I REMAIN,

8. A NEW COLLECTIVE AGREEMENT (EXHIBIT 1) WAS SIGNED IN JANUARY 1971, BETWEEN CUPE AND THE HOSPITAL WHICH CONTAINED A COMPULSORY CHECK-OFF CLAUSE (ARTICLES 6.4 AND 6.5). TERPSTRA TESTIFIED THAT WHEN SECTION 35A WAS PROCLAIMED INTO FORCE, A LETTER WAS IMMEDIATELY DRAWN UP ASKING CUPE FOR HIS EXEMPTION FROM THE CHECK-OFF CLAUSE. THIS LETTER (EXHIBIT 2) WHICH SOMEONE ELSE TYPED BUT WHICH TERPSTRA READ OVER AND SIGNED AND WHICH, HE TESTIFIED, WAS IN AGREEMENT WITH HIS BELIEFS, IS AS FOLLOWS:

I, RALPH TERPSTRA OF BURLINGTON, ONTARIO HEREBY DECLARE THAT BECAUSE OF MY RELIGIOUS CONVICTION AND BELIEF I, AS A CHRISTIAN WHO DAILY SEEKS TO LIVE BY THE SCRIPTURES AND WHO THEREFORE SEEKS TO HONOUR MY LORD AND SERVE MY NEIGHBOR IN ALL THAT I DO AND WHEREVER I AM, CANNOT IN GOOD FAITH BECOME A MEMBER OF OR LEND ANY KIND OF SUPPORT TO A LABOUR ORGANIZATION SUCH AS THE CANADIAN UNION OF PUBLIC EMPLOYEES WHICH IN ITS CONSTITUTION AND IN ITS DAY-TO-DAY ACTIVITY IS NOT

COMMITTED TO HONOURING THE WORD OF GOD AS IT APPLIES TO LABOUR-MANAGEMENT RELATIONS AND SOCIO-ECONOMIC LIFE GENERALLY.

HOWEVER, AS PROOF OF MY GOOD FAITH IN THIS MATTER OF CONSCIENCE, I HEREBY DECLARE THAT I AM QUITE PREPARED TO PAY AN AMOUNT EQUAL TO THE DUES CHARGED BY THE CANADIAN UNION OF PUBLIC EMPLOYEES TO WHICH FELLOW-EMPLOYEES ARE REPORTEDLY SUBJECT UNDER THE TERMS OF THE COLLECTIVE AGREEMENT BETWEEN CUPE LOCAL UNION #1065 AND THE JOSEPH BRANT MEMORIAL HOSPITAL AND TO HAVE THIS AMOUNT FORWARDED TO A REGISTERED CANADIAN CHARITY THAT IS ACCEPTABLE TO BOTH CUPE AND MYSELF; FOR EXAMPLE THE RED CROSS.

WHEN IT BECAME APPARENT THAT NOTHING WAS GOING TO BE DONE IN CONNECTION WITH HIS REQUEST TO CUPE, TERPSTRA INSTRUCTED THE COMMITTEE FOR JUSTICE AND LIBERTY TO PROCEED WITH THE PRESENT APPLICATION.

9. A NUMBER OF ARGUMENTS WERE ADDRESSED TO THE BOARD IN THIS CASE WHICH HAVE IN EFFECT BEEN DEALT WITH BY THE BOARD IN TWO EARLIER CASES, THE CORPORATION OF THE BOROUGH OF NORTH YORK, BOARD FILE NO. 128-70-M, DECISION DATED JULY 20, 1971, AND JOSEPH BRANT MEMORIAL HOSPITAL OF THE BURLINGTON-NELSON HOSPITAL, BOARD FILE NO. 130-70-M, DECISION DATED JULY 26, 1971. IN THE LAST MENTIONED DECISION THE BOARD POINTED OUT THAT IT WAS DEALING WITH AN ARGUMENT MADE BY COUNSEL FOR CUPE BOTH IN THAT CASE AND ELABORATED ON IN THE PRESENT CASE, AN ARGUMENT WHICH, INCIDENTALLY, COUNSEL STATED WAS HIS STRONGEST ARGUMENT IN THIS CASE. WE DO NOT PROPOSE TO REPEAT THESE ARGUMENTS AND THEIR RESOLUTION BUT, RATHER, WILL CONCENTRATE OUR ATTENTION UPON THOSE ISSUES AND ARGUMENTS WHICH DIFFER FROM THOSE IN THE TWO EARLIER CASES.

10. IT WAS CONTENDED BY COUNSEL FOR CUPE THAT AN OBJECTION UNDER SECTION 35A MUST BE A RELIGIOUS OBJECTION AND THAT TERPSTRA'S OBJECTION TO CUPE IS A POLITICAL RATHER THAN A RELIGIOUS OBJECTION. THIS ARGUMENT IS FOUNDED IN PART ON THE QUOTATION FROM EXHIBIT 4 IN PARAGRAPH 6 OF THESE REASONS AND IN PART ON TERPSTRA'S TESTIMONY THAT CUPE'S SUPPORT OF THE NEW DEMOCRATIC PARTY WAS ONE OF THE OBJECTIONS HE HAD TO ITS ACTIVITIES AND ONE OF THE REASONS HE MADE THIS APPLICATION. HOWEVER, AS WAS POINTED OUT IN THE EARLIER CASE INVOLVING THE RESPONDENT HOSPITAL (DECISION DATED JULY 26, 1971, AT P. 10) WHILE THE PARAGRAPH IN QUESTION IN EXHIBIT 4 INDICATES THAT TERPSTRA MAY BE OPPOSED TO SOCIALISM, IT ALSO INDICATES THAT THIS OPPOSITION STEMS FROM HIS RELIGIOUS BELIEFS. FURTHERMORE, IN HIS TESTIMONY, TERPSTRA STATED THAT HE WOULD NOT VOTE N.D.P. BECAUSE IN HIS VIEW IT IS OPPOSED TO CHRISTIANITY -- ITS DOCTRINE IS ANTI-CHRISTIAN. IN THESE CIRCUMSTANCES WE ARE NOT ABLE TO CHARACTERIZE TERP-

STRA'S OBJECTION AS ONE FOUNDED ON A POLITICAL RATHER THAN A RELIGIOUS BELIEF. WHILE THERE WAS EVIDENCE FROM THE PRESIDENT OF THE RESPONDENT LOCAL 1065 THAT THIS PARTICULAR LOCAL DOES NOT IN FACT SUPPORT THE N.D.P., WE DO NOT THINK THIS FACT MAKES ANY DIFFERENCE TO THIS CASE. IT IS CLEAR THAT THE LOCAL IS A LOCAL OF THE PARENT ORGANIZATION AND THAT IT PAYS A PER CAPITA TAX ON ALL DUES COLLECTED TO THE PARENT ORGANIZATION. IT IS ALSO CLEAR FROM EXHIBITS 2 AND 4, THAT TERPSTRA'S OBJECTION WITH RESPECT TO THE N.D.P. IS ONE AGAINST THE PARENT ORGANIZATION WITH WHOSE CONSTITUTION WE ARE HERE CONCERNED SINCE LOCAL 1065 DOES NOT HAVE A SEPARATE CONSTITUTION.

11. COUNSEL FOR CUPE QUESTIONED THE SINCERITY OF TERPSTRA'S BELIEF BECAUSE HE CONTINUED TO WORK UNDER THE TERMS AND CONDITIONS OF A COLLECTIVE AGREEMENT ALTHOUGH THAT DOCUMENT DID NOT GIVE SPIRITUAL GUIDANCE AND WAS NEGOTIATED BY A UNION WHICH HE CLAIMED HE COULD NOT JOIN OR PAY DUES TO. QUESTIONED ON THIS POINT IN CROSS EXAMINATION, TERPSTRA'S ANSWER WAS THAT HE DID NOT WORK FOR THE UNION BUT FOR THE EMPLOYER, THAT HE WAS RESPONSIBLE ONLY TO THE EMPLOYER, THAT HOW THE EMPLOYER ARRIVED AT HIS WORKING CONDITIONS WAS NOT HIS CONCERN BECAUSE HE WAS NOT PART OF IT, THAT HIS RELATIONSHIP WAS STILL WITH HIS EMPLOYER, THAT HE DID NOT CONSIDER HIMSELF BOUND BY THE AGREEMENT, RATHER, HIS CONTRACT WAS WITH THE EMPLOYER AND THAT, IN ANY EVENT, THE NEGOTIATION OF THOSE CONDITIONS BY THE UNION WAS DONE UNDER HIS PROTEST. TERPSTRA CONCEDED THAT HIS WORKING CONDITIONS WERE OF GRAVE CONCERN TO HIM, BUT NOT HOW THEY WERE ARRIVED AT. IF THOSE CONDITIONS WERE CONTRARY TO HIS BELIEFS, HE STATED, HE COULD NOT WORK UNDER THEM. THAT, OF COURSE, IS PRECISELY WHAT THIS APPLICATION IS ALL ABOUT.

12. AS WAS POINTED OUT IN THE CORPORATION OF THE BOROUGH OF NORTH YORK CASE SUPRA, THE QUESTION BEFORE THE BOARD IS NOT WHETHER THE BELIEF IS TOO SELECTIVE OR WHETHER WE FIND IT TO BE A REASONABLE BELIEF BUT, RATHER, WHETHER TERPSTRA DOES HAVE THE BELIEF. WHILE IT MIGHT SEEM ILLOGICAL TO SOME THAT HE WOULD WORK UNDER TERMS AND CONDITIONS NEGOTIATED BY CUPE, IT IS ALSO CLEAR THAT TERPSTRA SEES NO CONFLICT. DESPITE AN ARDOUS CROSS-EXAMINATION ON THIS POINT, HE WAS COMPLETELY UNSHAKEN IN HIS EVIDENCE. WHILE HE MAY BE WRONG IN LAW, HE CONSIDERS HIMSELF BOUND TO HIS EMPLOYER. SO FAR AS HE IS CONCERNED, HE WORKS FOR THE HOSPITAL, THEY PAY HIM AND HE DOES NOT FEEL THAT CUPE "IS PART OF IT". THERE IS NO QUESTION IN OUR MINDS THAT THIS IS WHAT HE SINCERELY BELIEVES AND WE ARE UNABLE, THEREFORE, TO FIND THAT THIS BELIEF DETRACTS FROM THE SINCERITY OF HIS OBJECTION TO JOINING CUPE OR PAYING DUES TO CUPE BECAUSE OF HIS RELIGIOUS CONVICTION OR BELIEF.

13. ONE FURTHER ARGUMENT MADE BY COUNSEL FOR CUPE, AGAIN ON THE QUESTION OF SINCERITY, RELATED TO CERTAIN TESTIMONY GIVEN BY THE PRESIDENT OF THE RESPONDENT UNION, ONE STEPHEN PATERSON. PATERSON

TESTIFIED THAT HE HAD HAD A NUMBER OF CONVERSATIONS WITH TERPSTRA ABOUT THE VARIOUS ASPECTS OF MEMBERSHIP AND DUES AND THAT ON ONE OCCASION PRIOR TO THE COMPLETION OF NEGOTIATIONS FOR AN AGREEMENT HE ASKED TERPSTRA WHAT HE WOULD DO IF DUES WERE MADE COMPULSORY. ACCORDING TO PATERSON, TERPSTRA REPLIED THAT HE FELT HE WOULD RATHER JOIN THE UNION BECAUSE HE WOULD THEN HAVE SOME SAY IN RUNNING ITS AFFAIRS. IN CROSS-EXAMINATION TERPSTRA HAD EARLIER TESTIFIED THAT HE HAD ALWAYS OBJECTED TO PAYING DUES, THAT HE WOULD BE FIRED IF REQUIRED TO PAY DUES TO THE UNION, THAT HE HAD NEVER EXPRESSED ANOTHER VIEW SO FAR AS HE COULD RECALL AND THAT HE WOULDN'T EXPRESS SUCH A VIEW. HE WAS NOT ASKED WHETHER HE HAD SPECIFICALLY MADE THE STATEMENT TO PATERSON WHICH THE LATTER SAYS HE DID. PATERSON WAS NOT ASKED ANY FURTHER QUESTIONS ABOUT THE CONVERSATION AND THERE IS NO EVIDENCE AS TO WHEN IT TOOK PLACE OTHER THAN IT WAS DURING ONE OF SEVERAL CONVERSATIONS HE HAD HAD WITH TERPSTRA AND THAT IT WAS PRIOR TO THE NEGOTIATION OF SOME AGREEMENT. IN CROSS-EXAMINATION PATERSON CONCEDED THAT HE WAS AWARE OF TERPSTRA'S OBJECTIONS TO JOINING CUPE AS EARLY AS 1966 AND THAT TERPSTRA HAD TOLD HIM THAT IT WAS HIS CHRISTIAN DUTY NOT TO SUPPORT CUPE. HE HAD ASKED TERPSTRA TO GIVE HIM SOME SCRIPTURAL BACKING, BUT HE DID NOT GET IT. WHEN THE QUESTION WAS PUT TO HIM WHETHER HE HAD ANY DOUBT ABOUT TERPSTRA'S SINCERITY, HE ANSWERED HE WOULD HAVE TO RESERVE ON THAT, AND HE GAVE THE SAME ANSWER TO THE QUESTION, "ARE YOU ABLE TO SUGGEST THAT HE IS INSINCERE?" HE ADMITTED THAT TERPSTRA HAD CONSISTENTLY REFUSED TO JOIN CUPE, THAT HE WAS AWARE OF HIS RELIGIOUS AFFILIATION AND KNEW THAT HE HAD BEEN AN ELDER IN THE CHURCH. TERPSTRA TESTIFIED FURTHER, IN CHIEF, THAT HE HAD TALKED TO PATERSON PRIOR TO THE UNION BEING CERTIFIED AND PATERSON HAD TOLD HIM THAT HE COULD NOT HAVE A UNION THAT REPRESENTS ALL PEOPLE AND YET HAVE A CONSTITUTION, AS TERPSTRA WISHED, TO WHICH TERPSTRA REPLIED, "IF THAT IS NOT IMPOSSIBLE, THEN I CANNOT JOIN." AFTER THE UNION WAS CERTIFIED, TERPSTRA TESTIFIED HE HAD OTHER CONVERSATIONS WITH PATERSON AND THE BASIC DIFFERENCES WERE ALWAYS THERE - - "THEY NEVER SAW EYE TO EYE ON THIS POINT".

14. PATERSON IS AN ELDER IN THE PRESBYTERIAN CHURCH AND DIRECTS A CHURCH CHOIR. QUITE CLEARLY HE BELIEVES, AT THE VERY LEAST, THAT TERPSTRA HAS MISGUIDED VIEWS. STILL, WE DO NOT FIND HIS EVASIVE ANSWERS ON TERPSTRA'S SINCERITY VERY HELPFUL. ON THE OTHER HAND, WE ACCEPT THE FACT THAT HE BELIEVES TERPSTRA MADE THE STATEMENT HE ATTRIBUTES TO HIM WITH RESPECT TO JOINING CUPE. OUR DIFFICULTY IS THAT WE KNOW NOTHING ABOUT THE CIRCUMSTANCES OR CONTEXT UNDER WHICH IT WAS MADE OR WHEN IT WAS MADE. CERTAINLY THERE IS NO SUGGESTION THAT IT WAS EVER REPEATED. FURTHERMORE, IT MUST BE VIEWED IN THE LIGHT OF THE OTHER UNCHALLENGED EVIDENCE OF TERPSTRA THAT HE HAD CONSISTENTLY REFUSED TO JOIN CUPE OR PAY DUES THERETO, THAT PATERSON WAS AWARE OF THIS AND WAS AWARE OF THE REASON WHY TERPSTRA TOOK HIS POSITION. IN ADDITION, IN ASSESSING THE SINCERITY OF TERPSTRA'S BELIEFS, EXHIBITS

2, 3, AND 4 AS SET OUT IN PARAGRAPHS 8, 7, AND 6 ABOVE, MUST NOT BE OVERLOOKED. WE AGREE WITH COUNSEL FOR THE APPLICANT THAT EXHIBIT 3 IN PARTICULAR, WHICH TERPSTRA COMPOSED AND TYPED HIMSELF, REVEALS THE RELIGIOUS NATURE AND SINCERITY OF HIS OBJECTION. CLEARLY IT IS NOT SELF-SERVING EVIDENCE. FINALLY, ON THE QUESTION OF SINCERITY, WE HAVE HAD AN OPPORTUNITY OF MAKING SUCH AN ASSESSMENT BY OBSERVING TERPSTRA AS HE GAVE EVIDENCE. BASED ON ALL THESE CONSIDERATIONS, WE ACCEPT TERPSTRA'S EVIDENCE THAT IF HE IS NOT GRANTED EXEMPTION, HE WOULD NOT PAY DUES TO CUPE AND WOULD THEREFORE EXPECT TO BE FIRED.

15. IN DEALING WITH TERPSTRA'S OBJECTION TO THE ACTIVITIES OF CUPE, COUNSEL POINTED OUT THAT THE INCIDENT INVOLVING THE HALTON COUNTY BOARD OF EDUCATION CONCERNED A DIFFERENT LOCAL THAN THE RESPONDENT UNION IN THIS CASE. WE DO NOT FIND THAT TO BE OF ANY GREAT SIGNIFICANCE. IT IS CLEAR FROM OTHER EVIDENCE THAT TERPSTRA HAD REASON TO BELIEVE THAT THE RESPONDENT UNION IN THIS CASE WOULD REACT IN THE SAME WAY. IN THE FIRST PLACE, CUPE NEGOTIATED A COLLECTIVE AGREEMENT REQUIRING COMPULSORY CHECK-OFF FOR ALL EMPLOYEES, ALTHOUGH AWARE OF TERPSTRA'S OBJECTIONS. SECONDLY, CUPE TOOK NO ACTION ON TERPSTRA'S REQUEST FOR AN EXEMPTION PRIOR TO MAKING THIS APPLICATION. IN THESE CIRCUMSTANCES IT CERTAINLY WOULD BE A REASONABLE INFERENCE THAT THE RESPONDENT UNION WAS NOT GOING TO ACCOMMODATE HIM, JUST AS THE OTHER CUPE LOCAL FAILED TO ACCOMMODATE HIS FELLOW CHURCH MEMBERS. WE CANNOT, THEREFORE, REGARD THE FACT THAT ANOTHER LOCAL WAS INVOLVED, IF, INDEED, TERPSTRA WAS AWARE OF THIS, AS DETRACTING FROM HIS EVIDENCE ABOUT HIS OBJECTIONS TO THE ACTIVITIES OF CUPE.

16. BEFORE THE BOARD MAY GRANT AN EXEMPTION UNDER SECTION 35A(1) IT MUST BE SATISFIED THAT AN EMPLOYEE OBJECTS TO JOINING A TRADE UNION OR OBJECTS TO THE PAYING OF DUES OR OTHER ASSESSMENTS TO A TRADE UNION BECAUSE OF HIS RELIGIOUS CONVICTION OR BELIEF. HAVING REGARD TO ALL THE EVIDENCE, THE REPRESENTATIONS OF COUNSEL AND IN THE LIGHT OF ALL THE FOREGOING CONSIDERATIONS, WE ARE SATISFIED THAT TERPSTRA, AN EMPLOYEE OF THE RESPONDENT HOSPITAL, BECAUSE OF HIS RELIGIOUS CONVICTION OR BELIEF, OBJECTS TO PAYING DUES OR OTHER ASSESSMENTS TO A TRADE UNION, NAMELY, THE RESPONDENT TRADE UNION, WHICH IS A PARTY TO A COLLECTIVE AGREEMENT WITH THE SAID HOSPITAL CONTAINING PROVISIONS OF THE TYPE MENTIONED IN CLAUSE (A) OF SUBSECTION 1 OF SECTION 35 OF THE LABOUR RELATIONS ACT, NAMELY ARTICLES 6.4 AND 6.5 A COPY OF WHICH COLLECTIVE AGREEMENT WAS FILED AS EXHIBIT 1.

17. COUNSEL FOR CUPE ASKED THE BOARD TO DEAL WITH ANOTHER PROBLEM SHOULD IT COME TO THE CONCLUSION THAT TERPSTRA SHOULD BE GRANTED AN EXEMPTION. THE PROBLEM WHICH HE RAISES MAY BE STATED AS FOLLOWS: IN THE LIGHT OF THE LANGUAGE OF SUBSECTION 2 OF SECTION 35A AND IN PARTICULAR THE WORDS "AND ONLY DURING THE LIFE OF SUCH COLLECTIVE AGREEMENT", DOES AN EXEMPTION APPLY ONLY DURING THE LIFE OF ONE COL-

LECTIVE AGREEMENT OR DOES IT CONTINUE DURING THE LIFE OF SUBSEQUENT COLLECTIVE AGREEMENTS BETWEEN THE PARTIES? WE HAVE NOT HAD THE BENEFIT OF ARGUMENT FROM COUNSEL ON THIS QUESTION AND, IN THESE CIRCUMSTANCES, WE ARE NOT GOING TO ATTEMPT TO PROVIDE AN ANSWER TO THE PROBLEM. WE CONTENT OURSELVES AT THIS TIME WITH MERELY OBSERVING THAT WE WOULD HESITATE TO PUT A CONSTRUCTION ON THE SECTION WHICH WOULD REQUIRE AN EMPLOYEE TO SEEK AN EXEMPTION EACH TIME A NEW COLLECTIVE AGREEMENT IS ENTERED INTO UNLESS THE LANGUAGE OF THE SECTION CLEARLY LEAVES US NO ALTERNATIVE.

18. HAVING REGARD TO ALL THE ABOVE CONSIDERATIONS, IT IS HEREBY ORDERED:

(1) THAT ARTICLES 6.4 AND 6.5 OF THE COLLECTIVE AGREEMENT BETWEEN THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL UNION No. 1065 AND JOSEPH BRANT MEMORIAL HOSPITAL OF THE BURLINGTON-NELSON HOSPITAL MADE THE 14TH DAY OF JANUARY, 1971, DO NOT APPLY TO RALPH TERPSTRA;

(2) THAT RALPH TERPSTRA IS NOT REQUIRED TO PAY ANY DUES, FEES OR ASSESSMENTS TO THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL UNION No. 1065;

PROVIDED THAT AMOUNTS EQUAL TO ANY INITIATION FEES, DUES OR OTHER ASSESSMENTS ARE PAID BY RALPH TERPSTRA TO OR ARE REMITTED BY THE JOSEPH BRANT MEMORIAL HOSPITAL OF THE BURLINGTON-NELSON HOSPITAL TO A CHARITABLE ORGANIZATION MUTUALLY AGREED ON BY RALPH TERPSTRA AND THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL UNION No. 1065.

19. IT WAS AGREED BY COUNSEL THAT THE QUESTION OF THE CHARITABLE ORGANIZATION TO BE MUTUALLY AGREED ON OR DESIGNATED BY THE BOARD, AS THE CASE MAY BE, SHOULD BE DEALT WITH AFTER THE RELEASE OF THIS DECISION. IF TERPSTRA AND CUPE ARE UNABLE TO AGREE ON A CHARITABLE ORGANIZATION, THEN EACH SHOULD SO INFORM THE BOARD IN WRITING FORTHWITH AND SHOULD INCLUDE THEREIN ANY REPRESENTATIONS EACH MAY CARE TO MAKE AS TO THE CHARITABLE ORGANIZATION TO BE DESIGNATED BY THE BOARD. AS AT PRESENT ADVISED, THE BOARD SEES NO REASON TO PUT THE PARTIES TO THE EXPENSE OF A FURTHER HEARING ON THIS QUESTION.

DECISION OF BOARD MEMBER E. BOYER: August 4, 1971.

1. I DISSENT. BEFORE GRANTING AN EXEMPTION UNDER SUBSECTION 1 OF SECTION 35A OF THE LABOUR RELATIONS ACT, I MUST BE SATISFIED THAT TERPSTRA'S OBJECTION TO PAYING DUES TO CUPE IS BECAUSE OF HIS RELIGIOUS CONVICTION OR BELIEF. HAVING REGARD TO THE EVIDENCE CONCERNING TERPSTRA'S VIEWS ON SOCIALISM AND THE NEW DEMOCRATIC PARTY,

I AM OF THE OPINION THAT HIS OBJECTION IS BASED MORE ON HIS POLITICAL BELIEFS THAN ON HIS RELIGIOUS BELIEF AND, ACCORDINGLY, I WOULD HAVE DISMISSED THE APPLICATION.

132-70-M: DIANE STROOP (APPLICANT) V. THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL UNION No. 1065 (RESPONDENT TRADE UNION) V. JOSEPH BRANT MEMORIAL HOSPITAL OF THE BURLINGTON-NELSON HOSPITAL (RESPONDENT EMPLOYER).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: W. R. HERRIDGE, Q.C., AND R. D. PECK FOR THE APPLICANT; S. SIMPSON AND S. PATERSON FOR THE RESPONDENT TRADE UNION; AND NO ONE APPEARING FOR THE RESPONDENT EMPLOYER.

DECISION OF G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBER F. W. MURRAY:
August 5, 1971.

1. THIS IS AN APPLICATION BY DIANE STROOP UNDER SECTION 35A(1) OF THE LABOUR RELATIONS ACT FOR AN ORDER BY THE BOARD THAT ARTICLES 6.2, 6.4 AND 6.5 OF THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT TRADE UNION, HEREINAFTER REFERRED TO AS "CUPE", AND THE RESPONDENT EMPLOYER, HEREINAFTER REFERRED TO AS "THE HOSPITAL", MADE THE 14TH DAY OF JANUARY, 1971, AND PURPORTING TO REMAIN IN FORCE AND IN EFFECT UNTIL SEPTEMBER 14TH, 1971, DO NOT APPLY TO DIANE STROOP AND THAT SHE IS NOT REQUIRED TO BE OR TO CONTINUE TO BE A MEMBER OF CUPE OR TO PAY DUES, FEES OR ASSESSMENTS TO THE SAID UNION.

2. SECTION 35A OF THE LABOUR RELATIONS ACT READS AS FOLLOWS:

35A - (1) WHERE THE BOARD IS SATISFIED THAT AN EMPLOYEE BECAUSE OF HIS RELIGIOUS CONVICTION OR BELIEF,

(A) OBJECTS TO JOINING A TRADE UNION; OR

(B) OBJECTS TO THE PAYING OF DUES OR OTHER ASSESSMENTS TO A TRADE UNION,

THE BOARD MAY ORDER THAT THE PROVISIONS OF A COLLECTIVE AGREEMENT OF THE TYPE MENTIONED IN CLAUSE "A" OF SUBSECTION 1 OF SECTION 35 DO NOT APPLY TO SUCH EMPLOYEE AND THAT THE EMPLOYEE IS NOT REQUIRED TO JOIN THE TRADE UNION, TO BE OR CONTINUE TO BE A MEMBER OF THE TRADE UNION, OR TO PAY ANY DUES, FEES

OR ASSESSMENTS TO THE TRADE UNION, PROVIDED THAT AMOUNTS EQUAL TO ANY INITIATION FEES, DUES OR OTHER ASSESSMENTS ARE PAID BY THE EMPLOYEE TO OR ARE REMITTED BY THE EMPLOYER TO A CHARITABLE ORGANIZATION MUTUALLY AGREED UPON BY THE EMPLOYEE AND THE TRADE UNION, BUT IF THE EMPLOYEE AND THE TRADE UNION FAIL TO SO AGREE THEN TO SUCH CHARITABLE ORGANIZATION REGISTERED AS A CHARITABLE ORGANIZATION IN CANADA UNDER PART 1 OF THE INCOME TAX ACT (CANADA) AS MAY BE DESIGNATED BY THE BOARD.

(2) SUBSECTION 1 APPLIES,

(A) SUBJECT TO CLAUSE "B", TO EMPLOYEES IN THE EMPLOY OF AN EMPLOYER AT THE TIME A COLLECTIVE AGREEMENT CONTAINING A PROVISION OF THE KIND MENTIONED IN SUBSECTION 1 IS FIRST ENTERED INTO WITH THAT EMPLOYER AND ONLY DURING THE LIFE OF SUCH COLLECTIVE AGREEMENT; AND

(B) WHERE A COLLECTIVE AGREEMENT IN FORCE WHEN THIS SUBSECTION COMES INTO FORCE CONTAINS THE PROVISIONS MENTIONED IN SUBSECTION 1, TO EMPLOYEES IN THE EMPLOY OF THE EMPLOYER AT THE TIME THIS SECTION COMES INTO FORCE AND ONLY DURING THE LIFE OF SUCH COLLECTIVE AGREEMENT,

AND DOES NOT APPLY TO EMPLOYEES WHOSE EMPLOYMENT COMMENCES AFTER THE ENTERING INTO OF THE COLLECTIVE AGREEMENT WHEN CLAUSE "A" APPLIES, OR AFTER THIS SECTION COMES INTO FORCE, WHEN CLAUSE "B" APPLIES.

3. SECTION 35A WAS ENACTED BY S. O. 1970, c. 85, s. 14, WHICH CAME INTO FORCE ON FEBRUARY 15, 1971 BY PROCLAMATION. ON THAT DATE MRS. STROOP WAS AN EMPLOYEE OF THE HOSPITAL, WAS IN THE BARGAINING UNIT DESCRIBED IN THE ABOVE-NOTED COLLECTIVE AGREEMENT AND WAS BOUND BY ITS TERMS AND CONDITIONS. THE AGREEMENT WAS IN FORCE ON FEBRUARY 15, 1971. ARTICLES 6.2, 6.4 AND 6.5 OF THE AGREEMENT ARE OF THE TYPE MENTIONED IN CLAUSE (A) OF SUBSECTION 1 OF SECTION 35 OF THE LABOUR RELATIONS ACT IN THAT THEY REQUIRE MEMBERSHIP IN CUPE AS A CONDITION OF EMPLOYMENT AND REQUIRE THE PAYMENT OF DUES TO THE SAID UNION. CLEARLY, THEREFORE, MRS. STROOP IS AN EMPLOYEE TO WHOM SECTION 35A(1) APPLIES.

4. THE EVIDENCE ESTABLISHES THAT MRS. STROOP, WHO WAS BORN IN HOLLAND, EMIGRATED WITH HER PARENTS TO CANADA IN 1958 AT THE AGE OF 9. IN HOLLAND SHE ATTENDED A CHRISTIAN ELEMENTARY SCHOOL, THAT IS, ONE CONTROLLED BY THE PARENTS AND NOT BY THE STATE. WHILE SHE ATTENDED A PUBLIC SCHOOL IN CANADA BECAUSE THERE WAS NO CHRISTIAN SCHOOL WHERE SHE LIVED, (WHEN ONE WAS ESTABLISHED, HER FATHER COULD NOT AFFORD TO SENT HER), SHE DID ATTEND A CHRISTIAN HIGH SCHOOL IN HAMILTON AND COMPLETED GRADE 10. IN THE CHRISTIAN SCHOOLS, ACCORDING TO MRS. STROOP, ALL SUBJECTS ARE TAUGHT ACCORDING TO THE PRINCIPLES OF THE BIBLE.

5. UPON LEAVING HIGH SCHOOL IN 1966 MRS. STROOP FIRST WORKED AS A PERSONAL MAID FOR A YEAR AND THEN SECURED EMPLOYMENT IN A BAKERY WHERE THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (HEREINAFTER REFERRED TO AS THE C.L.A.C.), WAS THE BARGAINING AGENT. SHE JOINED THAT UNION AT THAT TIME. SUBSEQUENTLY SHE TOOK A REGISTERED NURSING ASSISTANTS COURSE AND IN JULY OF 1968 OBTAINED EMPLOYMENT AT THE HAMILTON GENERAL HOSPITAL. A LOCAL OF THE CANADIAN UNION OF PUBLIC EMPLOYEES OTHER THAN THE RESPONDENT TRADE UNION WAS THE BARGAINING AGENT AT THE HOSPITAL AND MRS. STROOP SIGNED A CARD BY WHICH SHE EITHER JOINED THE UNION OR AUTHORIZED DUES DEDUCTIONS. MRS. STROOP WAS MARRIED IN JULY OF 1969 AND MOVED TO BURLINGTON AND IN SEPTEMBER OF 1969 SHE LEFT THE HAMILTON GENERAL AND OBTAINED EMPLOYMENT, STARTING SEPTEMBER 15TH, WITH THE RESPONDENT HOSPITAL WHERE SHE IS PRESENTLY EMPLOYED AS A REGISTERED NURSING ASSISTANT. IN JANUARY OF 1970 SHE JOINED THE RESPONDENT TRADE UNION. THIS SHE WAS REQUIRED TO DO IN ORDER TO REMAIN AN EMPLOYEE UNDER THE TERMS OF A COLLECTIVE AGREEMENT MADE NOVEMBER 9, 1969, BUT EFFECTIVE FROM SEPTEMBER 14, 1969, THE DAY BEFORE SHE COMMENCED TO WORK FOR THE HOSPITAL. (SEE EXHIBIT 3, ARTICLE 6.3)

6. MRS. STROOP IS A MEMBER, ALONG WITH HER HUSBAND, OF THE CANADIAN REFORMED CHURCH OF BURLINGTON WEST WHICH SHE ATTENDS TWICE ON SUNDAY UNLESS ON DUTY AT THE HOSPITAL. SHE IS TREASURER OF THE WOMEN'S SOCIETY OF THE CHURCH. SHE AND HER HUSBAND MAKE SUBSTANTIAL FINANCIAL CONTRIBUTIONS TO THE CHURCH AND ALSO TO THE CHRISITAN SCHOOL, DESPITE THE FACT THEY HAVE NO CHILDREN AT THIS TIME.

7. MRS. STROOP TESTIFIED THAT WHEN SHE JOINED THE UNION AT THE HAMILTON GENERAL HOSPITAL SHE REALLY DIDN'T KNOW EHETHER SHE HAD JOINED OR NOT, THOUGH SHE UNDERSTOOD SHE WAS PAYING DUES AND DUES WERE DEDUCTED. IT WAS HER UNDERSTANDING SHE HAD TO PAY DUES IN ORDER TO WORK THERE. SHE WAS 19 WHEN SHE STARTED WORK AT THE HOSPITAL AND WAS LIVING AT HOME WITH HER PARENTS. AT THE RESPONDENT HOSPITAL SHE WAS NOT APPROACHED TO JOIN THE UNION UNTIL JANUARY OF 1970. AT FIRST SHE REFUSED, THEN LATER SIGNED A CARD. SHE DIDN'T OBJECT AT HAMILTON BECAUSE, SHE TESTIFIED, SHE REALLY DID NOT KNOW WHAT THE UNION STOOD FOR. THIS, SHE SAID, WAS ALSO THE CASE IN BURLINGTON, THOUGH SHE WAS BEGINNING TO HAVE "SOME QUERIES". HOWEVER, NO ONE HAD EVER EXPLAINED THE QUESTION OF "NEUTRAL" UNIONS TO HER. IN

MARCH OF 1970 SHE HAD A VISIT FROM THE ELDERS OF THE CHURCH WHO TALKED IT OVER WITH HER. THEY TOLD HER WHAT THE UNION CONSISTED OF AND THAT ITS CONSTITUTION AND DAILY ACTIVITIES, INCLUDING THE WAY IT NEGOTIATED, DID NOT COMPLY WITH THE BIBLE. HOWEVER, THE ELDERS DID NOT TRY TO PERSUADE HER TO LEAVE THE UNION BUT LEFT IT WITH HER TO MAKE UP HER OWN MIND. SHE TESTIFIED SHE HAD OTHER DISCUSSIONS WITH MEMBERS OF HER FAMILY, CHURCH MEMBERS AND HER HUSBAND. SHE ULTIMATELY REACHED THE CONCLUSION THAT IT WAS AGAINST HER RELIGIOUS BELIEF TO CONTINUE TO BE A MEMBER OF OR PAY DUES TO CUPE.

8. IN EXPLAINING HER PRESENT BELIEF, MRS. STROOP STATED THAT, IN ALL ASPECTS OF LIFE SHE IS PUT HERE TO GLORIFY THE KINGDOM OF GOD. THIS APPLIES EVERY DAY AND DURING WORK AND INCLUDES TELLING THIS TO HER CO-WORKERS. IN SO FAR AS HER ROLE AS A REGISTERED NURSING ASSISTANT IS CONCERNED, SHE BELIEVES GOD IS GIVING HER THIS OPPORTUNITY TO FURTHER HIS KINGDOM IN HELPING OTHER PEOPLE. SHE CANNOT CONTINUE TO BE A MEMBER OF CUPE BECAUSE SHE NOW REALIZES, AFTER HER INQUIRIES AND DISCUSSIONS, INCLUDING HER OWN SEARCH OF THE BIBLE, THAT IT IS AGAINST HER RELIGIOUS BELIEF TO BELONG TO AN ORGANIZATION THAT DOES NOT ACKNOWLEDGE THE PRINCIPLES OF THE BIBLE IN A POSITIVE WAY BOTH IN ITS CONSTITUTION AND ITS DAILY ACTIVITIES. SHE TESTIFIED THAT WHEN SHE FIRST READ THE CUPE CONSTITUTION AT THE HAMILTON GENERAL HOSPITAL, SHE DID NOT REALIZE THERE WAS ANYTHING IN IT AGAINST THE BIBLE. SHE NOW BELIEVES THAT THE CONSTITUTION OF THE UNION AND ITS DAILY ACTIVITIES MUST BE POSITIVE IN ACKNOWLEDGE THE BIBLE AND NOT JUST NEGATIVE OR NEUTRAL. IN HER VIEW, CUPE BOTH IN ITS CONSTITUTION AND IN ITS DAILY ACTIVITIES, FAILS TO MEET THIS STANDARD AND, IN CONSCIENCE, SHE CANNOT REMAIN A MEMBER.

9. MRS. STROOP ALSO TESTIFIED THAT WHEN SHE FINALLY ARRIVED AT THIS CONCLUSION, SHE KNEW FROM DISCUSSIONS WITH PATERSON, THE PRESIDENT OF THE RESPONDENT UNION, THAT SHE COULD NOT GET OUT OF THE UNION AND REMAIN AN EMPLOYEE OF THE HOSPITAL, SO SHE DECIDED TO RESIGN HER POSITION AND SEEK WORK AT A HOSPITAL IN OAKVILLE, SHE DECIDED TO DO THIS BECAUSE SHE UNDERSTOOD THERE WAS NO UNION IN THE HOSPITAL IN OAKVILLE, ALTHOUGH SHE WOULD HAVE REFERRED TO WORK IN BURLINGTON, WHERE SHE LIVED. MRS. STROOP TESTIFIED SHE REACHED THIS DECISION IN NOVEMBER OF 1970 AND THEREUPON SENT IN A LETTER OF RESIGNATION TO THE DIRECTOR OF NURSING AT THE HOSPITAL, DATED NOVEMBER 18TH. IN THIS LETTER, EXHIBIT 2, MRS. STROOP SET OUT HER REASONS FOR TAKING THIS ACTION. THIS LETTER READS IN PART AS FOLLOWS:

I CAN NO LONGER ALLOW MYSELF TO BELONG OR CONTRIBUTE TO AN ORGANIZATION WHICH FORCES ME TO BE A MEMBER OF IT. THIS IS A DEMOCRATIC COUNTRY, YET I AM NOT ALLOWED THE FREEDOM TO DECIDE WHETHER TO BELONG TO SAID UNION OR NOT!

IS THIS DEMOCRATIC? IS THIS FREEDOM OF RELIGION?; SO THAT IF ONE'S RELIGIOUS BELIEFS CAN'T AGREE WITH SOMETHING, ONE CANNOT REFUSE IT? IS THIS WHAT THE "BILL OF RIGHTS" STATES?

WHEN ONE BECOMES; OR IS A MEMBER; OF C.U.P.E., ONE HAS TO COMPLY WITH THEIR "LAWS"; PRESENT, PAST AND FUTURE. HOW CAN I KNOW WHETHER IN THE PAST OR IN THE FUTURE THESE "LAWS" WILL COINCIDE WITH THE BIBLE? ALSO IF THEY DIDN'T; OR DON'T IN THE FUTURE; I, AS A MINORITY WOULD HAVE TO WITHDRAW MY COMPLAINT; AND IF I DIDN'T LIKE THIS; THEN I COULD NOT QUIT THE UNION, BECAUSE I'D HAVE TO RESIGN.

WHERE DOES THAT LEAVE ME? WELL, MY HUSBAND (AND) I HAVE THOUGHT THIS MATTER OVER; AND SINCE CHRIST IS OUR ONLY AUTHORITY WE HAVE TO LISTEN TO HIM. SO, RATHER THAN HAVING TO DO TO THE UNION; ASKING IF I CAN CEASE TO BE A MEMBER THEREOF, AND BE REFUSED THIS; (I HAVE ASKED MR. PATERSON BEFORE IF I COULD WORK HERE WITHOUT BELONGING TO THE UNION; AND ALSO KNOW OF CASES WHERE MEN HAD WORKED FOR A COMPANY FIFTEEN YEARS, AND HAD BEEN FIRED WITHOUT A BLINK OF THE EYE, BECAUSE THEY DIDN'T WANT TO BELONG TO THE UNION EITHER) I KNOW THAT IT IS MY DUTY TO RESIGN.

NOW YOU MAY SAY; WHY TELL ME ALL THIS? WELL MISS DAVIDSON, I THINK IT IS MY CHRISTIAN DUTY TO BRING TO YOUR ATTENTION ALL THESE THINGS, SO THAT ONE DAY, SOMEONE WHO BELIEVES THE SAME AS I, MIGHT WORK AT YOUR HOSPITAL WITHOUT BELONGING C.U.P.E.

10. ALTHOUGH MRS. STROOP'S LAST DAY AT THE HOSPITAL WAS TO HAVE BEEN DECEMBER 4TH, SHE HAD A MEETING WITH A MR. LEWIS OF THE PERSONNEL DEPARTMENT OF THE HOSPITAL AND WAS TOLD OF THE AMENDMENT TO THE LABOUR RELATIONS ACT AS SET OUT IN SECTION 35A. SHE WAS ALSO TOLD THE UNION WOULD EXEMPT HER AND WAS ADVISED BY THE ASSISTANT DIRECTOR OF NURSING TO STAY ON. WHEN THE EXEMPTION WAS APPARENTLY NOT FORTHCOMING, THE PRESENT APPLICATION WAS FILED. MRS. STROOP TESTIFIED, FURTHER, THAT IF SHE IS NOT GRANTED AN EXEMPTION, THEN SHE WILL QUIT HER JOB.

11. MRS. STROOP GAVE HER EVIDENCE IN A CALM, STRAIGHTFORWARDED MANNER. SHE WAS UNSHAKEN IN CROSS-EXAMINATION AND NO REPLY EVIDENCE WAS CALLED, SO HER EVIDENCE IS UNCONTRADICATED. WE FOUND HER TO BE A SINCERE AND TRUTHFUL WITNESS AND HAVE NO REASON TO DOUBT ANY OF HER

TESTIMONY. ACCEPTING HER EVIDENCE AS WE DO, AND HAVING REGARD TO THE BOARD'S PREVIOUS DECISIONS WITH RESPECT TO THE MEANING OF SECTION 35A IN SUCH CASES AS THE CORPORATION OF THE BOROUGH OF NORTH YORK, DECISION DATED JULY 20, 1971, AND TWO OTHER CASES INVOLVING THE RESPONDENT HOSPITAL, DECISIONS DATED JULY 26, 1971 AND AUGUST 4, 1971, WE FIND THAT THE APPLICANT HAS ESTABLISHED A PRIMA FACIE CASE ENTITLING HER TO AN ORDER. ALTHOUGH THERE WAS EVIDENCE THAT MRS. STROOP PREFERRED TO BELONG TO THE C.L.A.C., BECAUSE ITS CONSTITUTION AND ACTIVITIES ARE BASED ON THE BIBLE AND ARE IN ACCORD WITH HER PRINCIPLES, SO FAR AS SHE KNEW (AND SHE IS NOT PRESENTLY A MEMBER), THAT PREFERENCE, IN OUR VIEW, CANNOT DETRACT FROM THE RELIGIOUS NATURE OF HER OBJECTION TO CONTINUING TO BE A MEMBER OF AND PAYING DUES TO CUPE. ALTHOUGH ONCE A MEMBER OF THE C.L.A.C., THAT IS NOT THE CASE NOW AND SHE TESTIFIED THAT SHE HAD NO DISCUSSIONS WITH THE C.L.A.C. WHEN CONSIDERING HER POSITION VIS-A-VIS CUPE. WE ARE SATISFIED THAT THE PREFERENCE IS MERELY AN EXTENSION OF AND COMPLEMENTARY TO HER RELIGIOUS BELIEFS WITH RESPECT TO CUPE'S CONSTITUTION AND ACTIVITIES. WE ARE UNABLE TO FIND THAT IT IS THE MAIN REASON OR EVEN A CONSCIOUS REASON FOR MRS. STROOP'S WILLINGNESS TO SACRIFICE HER POSITION WITH THE RESPONDENT HOSPITAL IN FAVOUR OF A LESS DESIRABLE POSITION WITH ANOTHER EMPLOYER. FURTHER, FOR THE REASONS GIVEN IN OUR DECISION DATED JULY 26, 1971, INVOLVING THE RESPONDENT HOSPITAL, WE REJECT THE SUBMISSION OF COUNSEL FOR CUPE THAT, HAVING REGARD TO MRS. STROOP'S EVIDENCE RESPECTING THE C.L.A.C., WE SHOULD EXERCISE OUR DISCRETION AND REFUSE RELIEF BECAUSE MRS. STROOP'S BELIEF RUNS COUNTER TO SECTION 10 OF THE LABOUR RELATIONS ACT AND SECTION 4(2) OF THE ONTARIO HUMAN RIGHTS CODE.

12. AS IN AN EARLIER CASE INVOLVING THE RESPONDENT HOSPITAL, DECISION DATED AUGUST 4, 1971, COUNSEL FOR CUPE QUESTIONED THE SINCERITY OF THE APPLICANT'S BELIEF ON THE GROUND THAT, DESPITE HER OBJECTION TO CONTINUING AS A MEMBER OF CUPE AND PAYING DUES THERETO, SHE WAS NEVERTHELESS CONTENT TO REMAIN AT THE HOSPITAL, IF GRANTED AN EXEMPTION, UNDER BINDING TERMS AND CONDITIONS OF EMPLOYMENT NEGOTIATED BY CUPE ON HER BEHALF. IN THE EARLIER DECISIONS ON SECTION 35A, THE BOARD FOUND THAT THE REASONABLENESS OF THE BELIEF WAS NOT A FACTOR WITH WHICH WE SHOULD BE CONCERNED. IN SO FAR, THEN, AS THIS ARGUMENT IS ADDRESSED TO REASONABLENESS, IT MUST BE REJECTED. ON THE QUESTION OF SINCERITY ALONE, IT IS HELPFUL TO REVIEW MRS. STROOP'S ANSWERS TO COUNSEL'S CROSS-EXAMINATION ON THIS QUESTION. SHE TESTIFIED THAT UNDER HER WORKING CONDITIONS SHE WORKS FOR GOD, NOT CUPE, AND WHILE SHE IS "IN THIS WORLD" SHE "IS NOT OF IT". SHE "PUTS HER WORKING CONDITIONS TO GLORIFY GOD" EVEN IF UNION-MADE IN PART, UNLESS THEY CONTRADICT THE BIBLE. IN HER VIEW, NO MATTER WHAT CONDITIONS SHE WORKS UNDER, EVEN THOSE IN RUSSIA, SHE WOULD WORK TO THE GLORY OF GOD. ON THE OTHER HAND, AS A MEMBER OF THE UNION, SHE HAS TO ABIDE BY ITS ACTIONS AND SHE IS RESPONSIBLE FOR THEM. AS A NON-MEMBER SHE CAN OBJECT TO THE UNION'S ACTIVITIES AND THAT IS THE ONLY WAY SHE CAN WORK AT THE HOS-

PITAL. WHILE SOME PERSONS MAY FIND THIS ATTITUDE ILLOGICAL AND DIFFICULT TO UNDERSTAND, THERE IS NO DOUBT IN OUR MINDS THAT MRS. STROOP IS COMPLETELY SINCERE ON THE QUESTION OF HER WORKING CONDITIONS AND, FUTHUR, THAT THIS SINCERITY STEMS FROM HER RELIGIOUS CONVICTION OR BELIEF. WE ARE SATISFIED THAT SUCH VIEWS DO NOT DETRACT FROM THE SINCERITY OF MRS. STROOP'S RELIGIOUS BELIEF RESPECTING CUPE'S CONSTITUTION AND ACTIVITIES.

13. BEFORE THE BOARD IS ENTITLED TO GRANT AN ORDER OF EXEMPTION UNDER SECTION 35A, IT MUST BE SATISFIED THAT THE APPLICANT, BECAUSE OF HER RELIGIOUS CONVICTION OR BELIEF, OBJECTS TO JOINING A TRADE UNION OR OBJECTS TO THE PAYING OF DUES OR OTHER ASSESSMENTS TO A TRADE UNION. AFTER A CAREFUL CONSIDERATION OF ALL THE EVIDENCE, THE DEMEANOUR OF THE APPLICANT AS A WITNESS, THE REPRESENTATIONS OF COUNSEL, AND IN THE LIGHT OF ALL CONSIDERATIONS REFERRED TO ABOVE, WE ARE SATISFIED THAT DIANE STROOP, AN EMPLOYEE OF THE RESPONDENT HOSPITAL, BECAUSE OF HER RELIGIOUS CONVICTION OR BELIEF, OBJECTS (A) TO JOINING A TRADE UNION, NAMELY, THE RESPONDENT TRADE UNION, AND (B) TO THE PAYING OF DUES OR OTHER ASSESSMENTS TO THAT UNION WHICH IS A PARTY TO A COLLECTIVE AGREEMENT WITH THE SAID HOSPITAL, CONTAINING PROVISIONS OF THE TYPE MENTIONED IN CLAUSE (A) OF SUBSECTION 1 OF SECTION 35 OF THE LABOUR RELATIONS ACT, NAMELY, ARTICLES 6.2, 6.4 AND 6.5, A COPY OF WHICH COLLECTIVE AGREEMENT WAS FILED AS EXHIBIT 1.

14. ACCORDINGLY, IT IS HEREBY ORDERED:

(1) THAT ARTICLES 6.2, 6.4 AND 6.5 OF THE COLLECTIVE AGREEMENT BETWEEN THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL UNION 1065 AND JOSEPH BRANT MEMORIAL HOSPITAL OF THE BURLINGTON-NELSON HOSPITAL, MADE THE 14TH DAY OF JANUARY, 1971 DO NOT APPLY TO DIANE STROOP;

(2) THAT DIANE STROOP IS NOT REQUIRED TO BE OR TO CONTINUE TO BE A MEMBER OF THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL UNION No. 1065 OR TO PAY ANY DUES, FEES OR ASSESSMENTS TO THE SAID UNION;

PROVIDED THAT AMOUNTS EQUAL TO ANY INITIATION FEES, DUES OR OTHER ASSESSMENTS ARE PAID BY DIANE STROOP TO OR ARE REMITTED BY THE JOSEPH BRANT MEMORIAL HOSPITAL OF THE BURLINGTON-NELSON HOSPITAL TO A CHARITABLE ORGANIZATION MUTUALLY AGREED ON BY DIANE STROOP AND THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL UNION No. 1065.

15. IT WAS AGREED BY COUNSEL THAT THE QUESTION OF THE CHARTITABLE ORGANIZATION TO BE MUTUALLY AGREED ON OR DESIGNATED BY THE BOARD,

AS THE CASE MAY BE, SHOULD BE DEALT WITH AFTER THE RELEASE OF THIS DECISION. IF MRS. STROOP AND CUPE ARE UNABLE TO AGREE ON A CHARITABLE ORGANIZATION, THEN EACH SHOULD SO INFORM THE BOARD IN WRITING FORTHWITH AND SHOULD INCLUDE THEREIN ANY REPRESENTATIONS EACH MAY CARE TO MAKE AS TO THE CHARITABLE ORGANIZATION TO BE DESIGNATED BY THE BOARD. AS AT PRESENT ADVISED, THE BOARD SEES NO REASON TO PUT THE PARTIES TO THE EXPENSE OF A FURTHER HEARING ON THIS QUESTION.

DECISION OF BOARD MEMBER E. BOYER: August 5, 1971.

1. I DISSENT. IN THE CORPORATION OF THE BOROUGH OF NORTH YORK CASE, IT WAS MY FINDING THAT THE APPLICANT'S OBJECTIONS TO JOINING THE RESPONDENT TRADE UNION IN THAT CASE WAS BASED ON HIS CONVICTIONS ABOUT TRADE UNIONISM AND THAT THOSE OBJECTIONS WERE OF A NON-RELIGIOUS NATURE. IN THE PRESENT CASE, MRS. STROOP'S EVIDENCE WITH RESPECT TO THE CHRISTIAN LABOUR ASSOCIATION OF CANADA IS SUBSTANTIALLY SIMILAR IN NATURE TO THE EVIDENCE IN THE NORTH YORK CASE. IN THESE CIRCUMSTANCES, I FIND IN THE PRESENT CASE THAT MRS. STROOP'S OBJECTION TO CONTINUING TO BE A MEMBER AND PAYING DUES TO CUPE IS BASED ON HER CONVICTIONS ABOUT TRADE UNIONISM RATHER THAN ON HER RELIGIOUS CONVICTION OR BELIEF.

2. IT FOLLOWS, THEN, THAT I WOULD HAVE DISMISSED THE APPLICATION.

561-71-R: THE ONTARIO ERECTORS ASSOCIATION (APPLICANT) V. THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (RESPONDENT) V. ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION (INTERVENER #1) V. METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION (INTERVENER #2) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 506 (INTERVENER #3) V. ONTARIO COUNCIL OF THE NATIONAL HOUSE BUILDERS ASSOCIATION (INTERVENER #4) V. HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (INTERVENER #5) V. ERECTORS DIVISION, ONTARIO PRECAST CONCRETE MANUFACTURERS' ASSOCIATION (INTERVENER #6) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATED LOCALS (INTERVENER #7).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: ROBIN B. CUMINE AND S. C. ECCLES FOR THE APPLICANT; AUBREY E. GOLDEN, MAURICE GREEN AND ALAN McISAAC FOR THE RESPONDENT; H. A. BERESFORD AND W. J. CHENERY FOR INTERVENERS #1 AND #5; W. L. FARRAR FOR INTERVENER #2; R. KOSKIE, T. NEIL AND O. D'AGOSTINI FOR INTERVENERS #3 AND #7; MICHAEL GORDON AND PETER STEVENS FOR

INTERVENER #4; RAYMOND WERRY FOR INTERVENER #6.

DECISION OF THE BOARD: AUGUST 9, 1971.

1. THE APPLICANT IS APPLYING TO THE BOARD FOR ACCREDITATION AS BARGAINING AGENT FOR EMPLOYERS, WHOSE EMPLOYEES ARE BARGAINED FOR BY THE RESPONDENTS, IN A UNIT OF EMPLOYEES THAT THE APPLICANT CLAIMS IS APPROPRIATE FOR ACCREDITATION.

2. THE BOARD LISTED THIS APPLICATION FOR HEARING ON AUGUST 3, 1971. THE PURPOSE OF THE HEARING WAS TO DETERMINE (1) WHETHER THE APPLICATION WAS PROPERLY MADE AGAINST A NUMBER OF TRADE UNIONS (2) THE APPROPRIATE GEOGRAPHIC AREA (3) THE APPROPRIATE SECTOR OR SECTORS, AND (4) SUCH OTHER ISSUES AS THE BOARD MIGHT CONSIDER APPROPRIATE TO DEAL WITH AT THAT STAGE IN THE PROCEEDINGS.

3. THE APPLICANT IN ITS APPLICATION NAMED SIX LOCALS OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS AS RESPONDENTS. MORE SPECIFICALLY, THE APPLICANT NAMED LOCAL UNIONS 700, 721, 736, 759, 765 AND 786 AS RESPONDENTS.

4. COUNSEL FOR THE APPLICANT ADVISED THE BOARD, AT THE HEARING ON AUGUST 3RD, AND IT WAS NOT DISPUTED BY ANY OF THE OTHER PARTIES TO THE PROCEEDING, THAT EACH OF THE NAMED RESPONDENTS HAD COLLECTIVE BARGAINING RELATIONSHIPS WITH TWO OR MORE OF THE EMPLOYERS IN THE UNIT PROPOSED BY THE APPLICANT. THE BOARD ACCORDINGLY FINDS THAT IT HAS JURISDICTION UNDER SECTION 97 OF THE ACT TO DEAL WITH THE INSTANT APPLICATION.

5. COUNSEL FOR THE APPLICANT SUBMITS THAT THE APPLICANT IS ENTITLED UNDER THE PROVISIONS OF SECTION 97 OF THE ACT TO NAME MORE THAN ONE TRADE UNION AS A RESPONDENT, NOTWITHSTANDING THE FACT THAT THE SECTION MAKES REFERENCE ONLY TO "A TRADE UNION". IN THE ALTERNATIVE, COUNSEL SUBMITS THAT THE SIX LOCAL UNIONS NAMED AS RESPONDENTS CONSTITUTE A "COUNCIL OF TRADE UNIONS" WITHIN THE MEANING OF SECTION 90 OF THE ACT.

6. DEALING FIRST WITH THE LATTER SUBMISSION, BASED ON THE REPRESENTATIONS OF FACT MADE BY COUNSEL FOR THE APPLICANT AND COUNSEL FOR THE RESPONDENT, THE BOARD IS SATISFIED THAT NEITHER THE SIX LOCAL UNIONS NAMED AS RESPONDENTS NOR ANY COMBINATION OF THEM CONSTITUTES A "COUNCIL OF TRADE UNIONS" WITHIN THE MEANING OF THE ACT.

7. WITH REGARD TO THE FIRST SUBMISSION OF COUNSEL FOR THE APPLICANT, SECTION 99 OF THE ACT WHICH DEALS WITH THE DISPOSITION OF AN APPLICATION FOR ACCREDITATION BY THE BOARD AND SECTIONS 100 AND 101 WHICH DEAL WITH THE EFFECT OF AN ACCREDITATION CERTIFICATE AND SECTION 102 OF THE ACT WHICH DEALS WITH THE TERMINATION OF BARGAINING RIGHTS

HELD BY AN ACCREDITED EMPLOYERS' ORGANIZATION, ALL CONTEMPLATE THAT AN ACCREDITATION CERTIFICATE WILL ONLY ISSUE WITH RESPECT TO THE BARGAINING RIGHTS HELD BY A SINGLE TRADE UNION OR A COUNCIL OF TRADE UNIONS. FURTHER, SECTIONS 100, 101 AND 102 CONTEMPLATE ONLY ONE COLLECTIVE AGREEMENT BEING ENTERED INTO AS THE ACCREDITED EMPLOYERS' ORGANIZATION. MOREOVER, THE JUXTAPOSITION OF A "TRADE UNION OR COUNCIL OF TRADE UNIONS" IN SECTION 97, AND THE JUXTAPOSITION OF "THE TRADE UNION OR COUNCIL OF TRADE UNIONS" IN SECTION 99 THROUGH 102, SUGGESTS THAT THE INTENT OF THE LEGISLATION IS THAT WHEN AN APPLICATION FOR ACCREDITATION IS MADE FOR MORE THAN ONE TRADE UNION, IT WILL BE MADE FOR A COUNCIL OF TRADE UNIONS. FINALLY, SUBSECTION (1) OF SECTION 98 PROVIDES INTER ALIA THAT THE BOARD SHALL DETERMINE THE UNIT OF EMPLOYERS THAT IS APPROPRIATE FOR COLLECTIVE BARGAINING IN A PARTICULAR GEOGRAPHIC AREA AND SECTOR. SUBSECTION (2) PROVIDES THAT THE UNIT OF EMPLOYERS SHALL COMPRISE ALL EMPLOYERS AS DEFINED IN CLAUSE (c) OF SECTION 90 IN THE GEOGRAPHIC AREA AND SECTOR DETERMINED BY THE BOARD TO BE APPROPRIATE. SECTION 90(c), IN PART, DEFINES AN "EMPLOYER" FOR PURPOSES OF AN APPLICATION FOR ACCREDITATION AS AN EMPLOYER FOR WHOSE EMPLOYEES A TRADE UNION OR COUNCIL OF TRADE UNIONS AFFECTED BY THE APPLICATION HAS BARGAINING RIGHTS IN A PARTICULAR GEOGRAPHIC AREA AND SECTOR. THE ABOVE PROVISIONS SEEM TO CONTEMPLATE APPLICATIONS FOR ACCREDITATION ONLY BEING MADE IN RESPECT OF ONE TRADE UNION OR A COUNCIL OF TRADE UNIONS WHICH HAS THE BARGAINING RIGHTS FOR EMPLOYEES OF EMPLOYERS IN A PARTICULAR GEOGRAPHIC AREA AND SECTOR. FOR THE FOREGOING REASONS, THE BOARD IS OF THE OPINION THAT THE LEGISLATION ENVISAGES AN APPLICATION FOR ACCREDITATION BEING MADE WITH RESPECT TO ONLY ONE TRADE UNION OR A COUNCIL OF TRADE UNIONS.

8. COUNSEL FOR THE APPLICANT ADVISED THE BOARD AT THE HEARING THAT IN THE EVENT THE BOARD WAS ONLY PREPARED TO DEAL WITH THE APPLICATION AS IT RELATES TO ONE OF THE NAMED RESPONDENTS, THE APPLICANT WANTED THE BOARD TO PROCEED WITH THE APPLICATION WITH RESPECT TO LOCAL UNION 721. HAVING REGARD TO THE REQUEST OF COUNSEL FOR THE APPLICANT THE BOARD WILL DEAL WITH THE APPLICATION AS IF ONLY LOCAL UNION 721 WAS NAMED AS A RESPONDENT. THE NAME "THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS LOCAL UNIONS 700, 721, 736, 759, 765, 786" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAMES OF THE RESPONDENTS IS AMENDED TO READ: "THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721". THE APPLICATION AS IT RELATES TO LOCAL UNIONS 700, 736, 759, 765 AND 786 IS HEREBY DISMISSED.

9. THE APPLICANT IN ITS APPLICATION DESCRIBED THE UNIT OF EMPLOYEES WHICH IT CLAIMED TO BE APPROPRIATE FOR COLLECTIVE BARGAINING IN TERMS OF ALL EMPLOYERS OF THE EMPLOYEES ENGAGED IN THE TRADE JURISDICTION OF IRONWORKERS AS SET OUT IN THE CONSTITUTION OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, SAVE AND EXCEPT THE WORK DONE BY RODMEN IN CONNEC-

TION WITH THE INSTALLATION OF REINFORCING STEEL. COUNSEL FOR THE APPLICANT AGREED AT THE HEARING THAT A UNIT DESCRIBED IN TERMS OF "ALL IRONWORKERS" WOULD ACCURATELY DESCRIBE THE EMPLOYEES OF THE EMPLOYERS FOR WHOM THE APPLICANT IS SEEKING ACCREDITATION.

10. THE GEOGRAPHIC AREA FOR WHICH THE APPLICANT HAS APPLIED FOR ACCREDITATION ENCOMPASSES THE ENTIRE PROVINCE OF ONTARIO. COUNSEL FOR THE APPLICANT ADVISED THE BOARD AT THE HEARING THAT THE TERRITORIAL JURISDICTION OF THE SIX RESPONDENTS ORIGINALLY NAMED IN ITS APPLICATION ENCOMPASSED ALL OF THE PROVINCE. SINCE THE BOARD HAS DETERMINED THAT IT WILL ONLY DEAL WITH THE APPLICATION AS IT RELATES TO LOCAL UNION 721, THE GEOGRAPHIC AREA OF ANY UNIT FOUND TO BE APPROPRIATE BY THE BOARD WOULD NOT EXTEND BEYOND THE GEOGRAPHIC AREA FOR WHICH LOCAL UNION 721 HAS BARGAINING RIGHTS FOR IRONWORKERS. THAT GEOGRAPHIC AREA, AS EVIDENCED BY THE COLLECTIVE AGREEMENTS FILED AT THE BOARD HEARING AS EXHIBITS, ENCOMPASSES THE DISTRICT OF MUSKOKA AND ALL OF THE COUNTIES OF DUFFERIN, DURHAM, HALIBURTON, NORTHUMBERLAND, ONTARIO, PEEL, PETERBOROUGH, PRINCE EDWARD, SIMCOE, VICTORIA AND YORK, THE TOWNSHIPS OF MARMORA, RAWDON, SIDNEY AND THURLOW IN THE COUNTY OF HASTINGS AND THE PREMISES OF THE FORD MOTOR COMPANY IN THE COUNTY OF HALTON.

11. THE APPLICANT IN ITS APPLICATION IS APPLYING FOR ALL OF THE "SECTORS" DEFINED IN SECTION 90(e) OF THE ACT, SAVE AND EXCEPT THE EMPLOYEES OF ONTARIO HYDRO IN THE ELECTRICAL POWER SYSTEMS SECTOR. SECTION 98(1) PROVIDES THAT THE BOARD NEED NOT CONFINE A UNIT TO ONE GEOGRAPHIC AREA OR SECTOR BUT MAY, IF IT CONSIDERS IT ADVISABLE, COMBINE AREAS OR SECTORS OR BOTH OR PARTS THEREOF. HAVING CONSIDERED THE REPRESENTATIONS OF ALL OF THE PARTIES TO THE PROCEEDINGS THE BOARD DOES NOT CONSIDER IT ADVISABLE IN THE INSTANT CASE TO COMBINE MORE THAN ONE SECTOR. COUNSEL FOR THE APPLICANT ADVISED THE BOARD THAT IN THE EVENT THAT THE BOARD DID DECIDE TO ONLY INCLUDE ONE SECTOR, IT WAS THE APPLICANT'S WISH THAT THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR BE INCLUDED IN ANY UNIT WHICH THE BOARD FOUND TO BE APPROPRIATE. THE BOARD IS PREPARED TO COMPLY IN THIS RESPECT WITH THE WISHES OF THE APPLICANT.

12. THE BOARD ACCORDINGLY FINDS THAT ALL EMPLOYERS OF EMPLOYEES WHO ARE IRONWORKERS FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS IN THE DISTRICT OF MUSKOKA AND THE COUNTIES OF DUFFERIN, DURHAM, HALIBURTON, NORTHUMBERLAND, ONTARIO, PEEL, PETERBOROUGH, PRINCE EDWARD, SIMCOE, VICTORIA AND YORK, AND THE TOWNSHIPS OF MARMORA, RAWDON, SIDNEY AND THURLOW IN THE COUNTY OF HASTINGS AND THE PREMISES OF THE FORD MOTOR COMPANY IN THE COUNTY OF HALTON IN THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR, CONSTITUTES AN APPROPRIATE UNIT FOR COLLECTIVE BARGAINING.

13. THE APPLICANT AND THE RESPONDENT ARE DIRECTED TO REVISE

THEIR PREVIOUS FILINGS CONCERNING EMPLOYERS WHO ARE AFFECTED BY THIS APPLICATION, IN ACCORDANCE WITH THE UNIT OF EMPLOYERS FOUND BY THE BOARD TO BE THE APPROPRIATE UNIT OF EMPLOYERS FOR THIS APPLICATION. MR. C. F. ROBICHEAU, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT BACK TO THE BOARD ON THE LISTS OF EMPLOYERS IN THE UNIT OF EMPLOYERS. THE APPLICANT AND THE RESPONDENT ARE FURTHER DIRECTED TO FILE REVISIONS TO THEIR PREVIOUS FILINGS WITH THE EXAMINER WITHIN FIFTEEN DAYS FROM THE DATE HEREOF.

563-71-R: CHRISTIAN TRADE UNIONS OF CANADA (LOCAL 6) (APPLICANT) V. G. S. WARK LIMITED (RESPONDENT).

BEFORE: R.A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND F.W. MURRAY.

DECISION OF THE BOARD: August 12, 1971.

1. ON JUNE 14, 1971, THE APPLICANT FILED AN APPLICATION FOR CERTIFICATION WITH RESPECT TO A PROPOSED BARGAINING UNIT CONSISTING OF ALL CARPENTERS, APPRENTICE CARPENTERS, CONSTRUCTION LABOURERS AND MACHINE OPERATORS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, HALDIMAND AND WELLAND (SAID COUNTIES NOW CORRECTLY DESIGNATED AS THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND), SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN. THE TERMINAL DATE FIXED FOR THIS APPLICATION WAS JUNE 22, 1971.

2. IT APPEARED FROM INFORMATION RECEIVED BY THE BOARD THAT THE RESPONDENT EMPLOYED ONLY A CARPENTER, A CONSTRUCTION LABOURER AND A BACK-HOE OPERATOR ON THE DATE OF THE MAKING OF THE APPLICATION. HAVING REGARD TO THE PRINCIPLE ENUNCIATED IN THE WINTER & SON CASE, OLRB, M.R., FEB. 1967, P. 889 AND TO SECTION 6(1) OF THE LABOUR RELATIONS ACT, THE BOARD DETERMINED THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES AND ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND AND ALL EMPLOYEES OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PREMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTED A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. ON JUNE 23, 1971 A CERTIFICATE ISSUED TO THE APPLICANT WITH RESPECT TO THE BARGAINING UNIT REFERRED TO IN PARAGRAPH TWO HEREOF.

4. ON JUNE 29, 1971, ONE WEEK AFTER THE TERMINAL DATE OF THIS APPLICATION, LOCAL 38 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (HEREINAFTER REFERRED TO AS "LOCAL 38") APPARENTLY SENT A TELEGRAM TO THE REGISTRAR WHICH READS AS FOLLOWS:

"IAN BRUNSKILL, REGISTRAR
DEPT OF LABOR 8 YORK ST TORONTO ONT
RE CHRISTIAN TRADE UNIONS OF CANADA
(LOCAL 6) AND G W WARK LIMITED
(APPLICATION JUNE 14 1971)
DEAR SIR: UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA
DESIRE TO INTERVENE ON THE ABOVE
APPLICATION FOR CERTIFICATION ON
BEHALF OF ALL CARPENTERS AND CAR-
PENTER APPRENTICES IN THE EMPLOY
OF G S WARK LIMITED FOR LINCOLN
WELLAND AND HALDIMAND COUNTY AP-
PLICATION FOR CERTIFICATION IS UN-
TIMELY STOP COMPANY HAS NO CARPEN-
TERS ON THIS THREE AND A HALF MIL-
LION DOLLAR CONTRACT AT PRESENT TIME
STOP WOULD REQUEST IMMEDIATE INVEST-
IGATION BY THE LABOR BOARD REGARDING
THIS APPLICATION FOR CERTIFICATION W
HAGUE LOCAL 38 UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA 136
OAKDALE AVE ST CATHARINES ONTARIO".

THIS TELEGRAM WAS NOT RECEIVED BY THE BOARD UNTIL JULY 14, 1971.

5. ON JULY 15, 1971, THE BOARD INSTRUCTED THE DEPUTY REGISTRAR TO CONTRACT MR. W. HAGUE AND REQUEST HIM TO SEND HIS REPRESENTATIONS TO THE BOARD IN THE FORM OF A LETTER. A LETTER FROM LOCAL 38 DATED JULY 23, 1971 AND RECEIVED BY THE BOARD ON JULY 26, 1971 READS AS FOLLOWS:

"JULY 23, 1971

DEPUTY REGISTRAR,
ONTARIO LABOUR RELATIONS BOARD,
8 YORK ST.,
TORONTO 1, ONTARIO

ATTENTION: MISS M. CALARCO

RE: NOTICE OF INTERVENTION BY THE
UNITED BROTHERHOOD OF CARPEN-
TERS & JOINERS OF AMERICA AND
THE CHRISTIAN TRADE UNIONS OF
CANADA, LOCAL #6, APPLICATION
FOR CERTIFICATION.

DEAR MADAM:

FURTHER TO THE TELEPHONE CONVERSATION
OF OUR MR. HAGUE AND YOURSELF CONCERNING
THE TELEGRAM WHICH THIS LOCAL UNION # 38
SENT, INTERVENING IN THE APPLICATION FOR
CERTIFICATION OF THE G. S. WARK CARPENTERS
BY THE CHRISTIAN TRADE UNION OF CANADA LO-
CAL #6. AT THE START OF THE PROJECT ON
MONDAY JUNE 14, 1971, TWO (2) REPRESENTA-
TIVES OF THE UNITED BROTHERHOOD OF CARPEN-
TERS & JOINERS OF AMERICA WENT TO THE JOB
SITE (NIAGARA REGION DETENTION CENTRE) AND
SAW TWO (2) MEN SHARPENING PICKETS ON THE
ROAD SIDE. THE REPRESENTATIONS SPOKE TO
MR. WARK AND ASKED FOR A MEETING, AND WED-
NESDAY JUNE 16, 1971 AT 10.00 A.M. IN THE
ST. CATHARINES LABOUR TEMPLE WAS AGREED TO.

REPRESENTATIVES OF MANY UNIONS WAITED
FOR THE ATTENDANCE OF MR. WARK BUT AS HE DID
NOT ARRIVE BY 10.45 A.M., THEY, (THE UNION
REPRESENTATIVES) WENT TO THE JOB SITE AND
WERE TOLD BY SUPERVISORY PERSONNEL THAT MR.
WARK WAS NOT THERE AND THAT THEY DID NOT
KNOW WHEN HE WOULD ARRIVE.

HAVING HEARD NOTHING FURTHER FROM G. S.
WARK LTD. THE SAME TWO (2) BUSINESS REPRE-
SENTATIVES VISITED THE JOB SITE ON TUESDAY
JUNE 29, 1971, AND ON ENTERING THE COMPANY'S
OFFICE, (A TRAILER) SAW AN APPLICATION FOR
CERTIFICATION OF ALL CARPENTERS, LABOURERS
AND MACHINE OPERATORS DATED JUNE 15, 1971
WITH THE TERMINAL DATE OF JUNE 22, 1971.

THE UNITED BROTHERHOOD OF CARPENTERS
& JOINERS OF AMERICA IMMEDIATELY SENT A
NIGHT LETTER TO THE LABOUR RELATIONS BOARD
INTERVENING IN THE APPLICATION. THIS WE

UNDERSTAND DID NOT ARRIVE UNTIL A CONSIDERABLE LAPSE OF TIME. WE ARE ENCLOSING A COPY OF THE NIGHT LETTER AND PROOF THAT IT WAS SENT ON THAT DATE OF JUNE 29, 1971. IT IS OUR CONTENTION THAT THE APPLICATION WAS UNTIMELY BECAUSE NO CARPENTERS WERE EMPLOYED ON THE CONSTRUCTION OF THE PROJECT AND FURTHERMORE THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA WERE NOT NOTIFIED OF THE CHRISTIAN TRADES UNION OF CANADA'S APPLICATION.

YOURS TRULY

(SIGNED T WETTEN) PER RW

T. WETTEN,
BUSINESS REPRESENTATIVE"

6. LOCAL 38 ATTACHED TO THE ABOVE REFERRED TO LETTER A STATEMENT OF ACCOUNT FROM CN TELECOMMUNICATIONS DATED JUNE 29, 1971 AND A COPY OF THE NIGHT LETTER DATED JUNE 29, 1971, WHICH APPARENTLY FORMED THE BASIS OF THE TELEGRAM RECEIVED BY THE BOARD ON JULY 14, 1971. THIS COPY OF THE NIGHT LETTER READS AS FOLLOWS:

"COPY OF NIGHT LETTER SENT JUNE 29, 1971

To:-

A.M. BRUNSKILL, REGISTRAR,
ONTARIO LABOUR RELATIONS BOARD
8 YORK ST.,
TORONTO 1, ONT.

RE: CHRISTIAN TRADES UNIONS OF
CANADA (LOCAL #6) AND G. S.
WARK LIMITED.
(APPLICATION JUNE 14, 1971)

DEAR SIR:

UNITED BROTHERHOOD OF CARPENTERS
& JOINERS OF AMERICA DESIRE TO INTERVENE
ON THE ABOVE APPLICATION FOR CERTIFICATION
ON BEHALF OF ALL CARPENTERS AND CARPENTER
APPRENTICES IN THE EMPLOY OF G.S. WARK LIMITED FOR LINCOLN, WELLAND AND HALDIMAND

COUNTIES. APPLICATION FOR CERTIFICATION IS UNTIMELY THE COMPANY HAS NO CARPENTERS ON THIS THREE AND ONE HALF MILLION DOLLAR PROJECT. WOULD REQUEST IMMEDIATE INVESTIGATION BY THE LABOUR RELATIONS BOARD REGARDING THIS APPLICATION FOR CERTIFICATION

(SIGNED) W. HAGUE, BUSINESS
REPRESENTATIVE

136 OAKDALE AVE.,
ST. CATHARINES"

7. ON JULY 30, 1971 THE BOARD RECEIVED A FURTHER LETTER FROM LOCAL 38 DATED JULY 28, 1971 WHICH READS AS FOLLOWS:

"JULY 28, 1971

THE REGISTRAR,
ONTARIO LABOUR RELATIONS BOARD,
8 YORK ST.,
TORONTO 1, ONTARIO.

ATTENTION: A.M. BRUNSKILL

RE: NOTICE OF INTERVENTION BY THE
UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA AND
THE CHRISTIAN TRADE UNIONS OF
CANADA, LOCAL #6, APPLICATION
FOR CERTIFICATION.

DEAR SIR:

PLEASE BE ADVISED THAT THIS MORNING I RECEIVED A TELEPHONE CALL FROM THE MANAGER OF THE C.N. TELECOMMUNICATIONS OFFICE IN ST. CATHARINES STATING THAT THE TELEGRAM IN QUESTION RE: THE ABOVE NOTICE WAS SENT BY TELEX AT 12.13 A.M. JUNE 30, 1971 TO THE DEPARTMENT OF LABOUR AND HE SUGGESTS THAT IT MUST HAVE BEEN LOST BETWEEN THE TELEX OPERATOR AND YOUR OFFICE.

YOURS TRULY
SIGNED R. WOODMAN
R. WOODMAN, FIN. SEC."

8. IT IS QUITE CLEAR THAT, REGARDLESS OF WHERE THE RESPONSIBILITY LIES FOR THE APPARENT DELAY IN THE BOARD RECEIVING THE TELEGRAM FROM LOCAL 38 DATED JUNE 29, 1971, LOCAL 38 DID NOT ATTEMPT TO INTERVENE IN THE APPLICANT'S APPLICATION FOR CERTIFICATION UNTIL ONE WEEK AFTER THE TERMINAL DATE OF THE APPLICATION AND UNTIL SIX DAYS AFTER THE ISSUANCE OF A CERTIFICATE TO THE APPLICANT.

9. LOCAL 38 WAS NOT NOTIFIED OF THIS APPLICATION FOR CERTIFICATION BECAUSE THERE WAS NO INDICATION BEFORE THE BOARD THAT LOCAL 38 HAD AN INTEREST IN THE APPLICANT'S APPLICATION FOR CERTIFICATION. THE FACT THAT THE APPLICANT APPLIED FOR CERTIFICATION ON BEHALF OF A BARGAINING UNIT WHICH INCLUDED CARPENTERS AND APPRENTICE CARPENTERS WITHIN LOCAL 38'S INTERNAL JURISDICTIONAL AREA DOES NOT IN ITSELF ENTITLE A CRAFT TRADE UNION SUCH AS LOCAL 38 TO NOTICE OF SUCH APPLICATION.

10. AT NO TIME HAS LOCAL 38 CLAIMED OR DEMONSTRATED TO THE BOARD THAT IT HAS BARGAINING RIGHTS FOR EMPLOYEES AFFECTED BY THE APPLICANT'S APPLICATION FOR CERTIFICATION OR THAT IT REPRESENTS EMPLOYEES AFFECTED BY THE APPLICANT'S APPLICATION FOR CERTIFICATION. NOT ONLY HAS LOCAL 38 FAILED TO COMPLY WITH SECTION 71(2) OF THE BOARD'S RULES OF PROCEDURE RESPECTING THE FILING OF AN INTERVENTION WITH THE BOARD BUT HAS ALSO FAILED TO ESTABLISH THAT AT THE MATERIAL TIME IT HAD ANY INTEREST IN THE APPLICANT'S APPLICATION FOR CERTIFICATION SO AS TO CONFER UPON IT THE STATUS TO INTERVENE THEREIN. LOCAL 38 WAS AND REMAINS A STRANGER TO THE APPLICANT'S APPLICATION FOR CERTIFICATION.

11. HAVING REGARD TO THE FOREGOING, THE BOARD FINDS THAT LOCAL 38 HAS NO STATUS TO REQUEST THE BOARD TO MAKE AN IMMEDIATE INVESTIGATION OF THE MATTERS RAISED BY LOCAL 38 IN ITS CORRESPONDENCE TO THE BOARD. THE SAID REQUEST MADE BY LOCAL 38 IS ACCORDINGLY DENIED.

12. THE BOARD AFFIRMS ITS DECISION IN THIS MATTER DATED JUNE 23, 1971 AND THE CERTIFICATE ISSUED THEREUNDER.

329-71-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. PORT WELER DRY DOCKS LIMITED (RESPONDENT) V. L.U. 303 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: W. R. HERRIDGE, Q.C. AND GERALD VANDEZANDE FOR THE APPLICANT; NO ONE APPEARING FOR THE RESPONDENT; A. G. MATTHEWS AND K. M. POTTER FOR THE INTERVENER; WILLIAM HENRY JESSOME FOR THE OBJECTORS.

DECISION OF THE BOARD:

August 10, 1971.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE APPLICANT SEEKS CERTIFICATION AS BARGAINING AGENT FOR A GROUP OF EMPLOYEES IN A BARGAINING UNIT COMPRISING ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE CITY OF ST. CATHARINES IN THE REGIONAL MUNICIPALITY OF NIAGARA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND ASSISTANT FOREMAN.
2. THERE WAS FILED IN OPPOSITION TO THE APPLICATION A STATEMENT OF DESIRE OR PETITION. THE PETITION CARRIES THE SIGNATURES OF ALL THE EMPLOYEES WHO HAD PREVIOUSLY SIGNED MEMBERSHIP CARDS IN THE APPLICANT. THE BOARD HEARD EVIDENCE WITH RESPECT TO THE ORIGINATION OF THE PETITION AND THE MANNER IN WHICH THE SIGNATURES THERETO WERE OBTAINED. HAVING REGARD TO ALL OF THE EVIDENCE, THE BOARD FINDS THAT THE PETITION CASTS DOUBT UPON THE MEMBERSHIP EVIDENCE FILED SUFFICIENT TO CAUSE THE BOARD, SHOULD OTHER CONSIDERATIONS TO BE DEALT WITH IN THIS CASE SO WARRANT, TO DIRECT THE TAKING OF A REPRESENTATION VOTE.
3. ON THE DATE OF THE APPLICATION, NAMELY APRIL 23, 1971, THERE WAS A COLLECTIVE AGREEMENT IN EXISTENCE, THE TERM OF WHICH EXTENDED FROM JUNE 1, 1969 TO MAY 29, 1971. THE PARTIES TO THE AGREEMENT ARE THE RESPONDENT HEREIN, INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS, AND HELPERS, LOCAL 680 PORT DALHOUSIE AND INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 303 ST. CATHARINES. THE APPLICATION IS TIMELY INSOFAR AS THE COLLECTIVE AGREEMENT IS CONCERNED AND NOTHING TURNS ON THAT POINT.
4. A MEMORANDUM OF UNDERSTANDING, DATED JANUARY 11, 1971 BETWEEN PORT WELLER DRY DOCKS LIMITED ON THE ONE HAND AND THE INTERVENER AND LOCAL 680 OF THE INTERNATIONAL BROTHERHOOD OF BOILERMAKERS ETC., WAS FILED WITH THE BOARD. THE MEMORANDUM RECORDS THE AGREEMENT OF THE PARTIES TO A MONETARY SETTLEMENT EFFECTIVE MAY 30, 1971 UP TO AND INCLUDING MAY 25, 1974. THE SETTLEMENT IS SET OUT IN THE MEMORANDUM WHICH IS SIGNED BY THE REPRESENTATIVES OF THE COMPANY AND OF EACH OF THE UNIONS.
5. THE BARGAINING UNIT SOUGHT BY THE APPLICANT IS WHAT IS GENERALLY TERMED A CRAFT UNIT OF THE KIND USUALLY DEALT WITH UNDER SECTION 6(2) OF THE ACT. THIS FACT RAISES CERTAIN PROBLEMS FIRST WITH RESPECT TO THE QUALIFICATIONS OF THE APPLICANT TO APPLY UNDER SECTION 6(2) AND SECONDLY WITH RESPECT TO THE NATURE OF THE BARGAINING UNIT OR UNITS NOW COVERED BY THE COLLECTIVE AGREEMENT REFERRED TO ABOVE. THE INTERVENER ARGUED THAT THE APPLICANT WAS NOT A CRAFT UNION AND WAS THEREFORE INELIGIBLE TO APPLY UNDER SECTION 6(2).

6. SECTION 6 OF THE ACT READS AS FOLLOWS:

- (1) UPON AN APPLICATION FOR CERTIFICATION, THE BOARD SHALL DETERMINE THE UNIT OF EMPLOYEES THAT IS APPROPRIATE FOR COLLECTIVE BARGAINING, BUT IN EVERY CASE THE UNIT SHALL CONSIST OF MORE THAN ONE EMPLOYEE AND THE BOARD MAY, BEFORE DETERMINING THE UNIT, CONDUCT A VOTE OF ANY OF THE EMPLOYEES OF THE EMPLOYER FOR THE PURPOSE OF ASCERTAINING THE WISHES OF THE EMPLOYEES AS TO THE APPROPRIATENESS OF THE UNIT.
- (2) ANY GROUP OF EMPLOYEES WHO EXERCISE TECHNICAL SKILLS OR WHO ARE MEMBERS OF A CRAFT BY REASON OF WHICH THEY ARE DISTINGUISHABLE FROM THE OTHER EMPLOYEES AND COMMONLY BARGAIN SEPARATELY AND APART FROM OTHER EMPLOYEES THROUGH A TRADE UNION THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO SUCH SKILLS OR CRAFT SHALL BE DEEMED BY THE BOARD TO BE A UNIT APPROPRIATE FOR COLLECTIVE BARGAINING IF THE APPLICATION IS MADE BY A TRADE UNION PERTAINING TO SUCH SKILLS OR CRAFT, AND THE BOARD MAY INCLUDE IN SUCH UNIT PERSONS WHO ACCORDING TO ESTABLISHED TRADE UNION PRACTICE ARE COMMONLY ASSOCIATED IN THEIR WORK AND BARGAINING WITH SUCH GROUP, BUT THE BOARD SHALL NOT BE REQUIRED TO APPLY THIS SUBSECTION WHERE THE GROUP OF EMPLOYEES IS INCLUDED IN A BARGAINING UNIT REPRESENTED BY ANOTHER BARGAINING AGENT AT THE TIME THE APPLICATION IS MADE, OR WHERE THE GROUP OF EMPLOYEES IS EXERCISING A COMBINATION OF TECHNICAL SKILLS OR IS REQUIRED TO PERFORM THE SKILLS IN WHOLE OR IN PART OF MORE THAN ONE CRAFT AS PART OF A WORK CREW OR TEAM, THE OTHER MEMBERS OF WHICH ARE ALSO REQUIRED TO PERFORM IN SIMILAR FASHION.

7. IT WAS THE APPLICANT'S POSITION THAT IT WAS ENTITLED TO BE CERTIFIED AS BARGAINING AGENT FOR THE UNIT SOUGHT EITHER UNDER SUBSECTION (2) OF SECTION 6 AS A "CRAFT" UNION OR BECAUSE, IN ANY EVENT, THE UNIT SOUGHT WAS OBVIOUSLY APPROPRIATE UNDER SUBSECTION (1) OF SECTION 6.

8. WITH RESPECT TO ITS POSITION UNDER SECTION 6(2), THE APPLICANT ARGUED THAT THE SUBSECTION DESCRIBES FIRSTLY THE EMPLOYEES WHO

MAY COMPRISE A BARGAINING UNIT THEREUNDER. SECONDLY, ACCORDING TO THE APPLICANT, THE SUBSECTION DESCRIBES THE TYPE OF UNION BY WHICH AN APPLICATION MAY BE MADE, I.E. A TRADE UNION PERTAINING TO THE SKILLS OR CRAFT INVOLVED.

9. THE APPLICANT'S ARGUMENT IS THAT THERE CAN BE NO QUESTION THAT THE EMPLOYEES IN THE UNIT SOUGHT HEREIN QUALIFY AS A GROUP WHO EXERCISE TECHNICAL SKILLS AND FULFIL THE REST OF THE REQUIREMENTS OF SUBSECTION (2) WITH RESPECT TO EMPLOYEES TO WHOM ITS PROVISIONS APPLY.

10. THE APPLICANT FURTHER MAINTAINS THAT IT QUALIFIES AS THE TYPE OF UNION CONTEMPLATED BY THE SUBSECTION AS BEING COMPETENT TO BRING AN APPLICATION THEREUNDER - THAT IS "A UNION PERTAINING TO SUCH SKILLS OR CRAFT" - BY REASON OF THE FACT THAT IT HAS BEEN CERTIFIED ON A NUMBER OF OCCASIONS AS BARGAINING AGENT FOR UNITS MADE UP SOLELY OF ELECTRICIANS, THEIR APPRENTICES AND HELPERS. THE FACT THAT THESE CERTIFICATES WERE ISSUED WITH RESPECT TO WORK IN THE CONSTRUCTION INDUSTRY AND, FURTHER, WERE ISSUED UNDER SECTION 6(1) AS APPROPRIATE UNITS RATHER THAN UNDER 6(2) AS CRAFT UNITS, COULD NOT, THE APPLICANT ARGUED DEROGATE FROM ITS STATUS, ARISING OUT OF THE CERTIFICATIONS AND SUBSEQUENT COLLECTIVE AGREEMENTS, AS A TRADE UNION PERTAINING TO THE SKILLS OR CRAFT EXERCISED BY THE EMPLOYEES INVOLVED.

11. IT SHOULD BE NOTED THAT VIRTUALLY EVERY CASE RELIED UPON BY THE APPLICANT IN SUPPORT OF ITS POSITION CONTAINS THE FOLLOWING PREFACING WORDS TO THE DESCRIPTION OF THE BARGAINING UNIT:

"HAVING REGARD TO THE PRINCIPLE ENUNCIATED IN THE WINTER & SON CASE, OLRB, M.R., FEB. 1967, P. 889 AND TO SECTION 6(1) OF THE LABOUR RELATIONS ACT, THE BOARD FURTHER FINDS THAT ALL ELECTRICIANS ETC."

12. PARAGRAPH 7 OF THE WINTER & SON CASE CONTAINS THE STATEMENT OF PRINCIPLE REFERRED TO ABOVE. THE PARAGRAPH READS AS FOLLOWS:

"THE APPLICANT IN THIS CASE ALSO PROPOSES AN "ALL EMPLOYEE" UNIT. THE RESPONDENT PROPOSES A UNIT CONSISTING OF PLASTERERS AND PLASTERERS' HELPERS. IT HAS BEEN THE PARTIES OF THE APPLICANT UNION TO ORGANIZE AND BARGAIN COLLECTIVELY ON AN "ALL EMPLOYEE" OR INDUSTRIAL BASIS AND NOT ON A CRAFT BASIS AS IS THE NORMAL PRACTICE IN THE CONSTRUCTION INDUSTRY. THE BOARD HAS RECOGNIZED THIS PRACTICE IN THE PAST AND HAS ISSUED CERTIFICATES TO THE APPLICANT AS WELL AS TO A

FEW OTHER UNIONS, IN TERMS OF "ALL EMPLOYEES". HOWEVER, IN RECENT CASES, THE BOARD HAS EXPRESSED CONCERN ABOUT BARGAINING UNITS OF CONSTRUCTION EMPLOYEES BEING ALL INCLUSIVE, AS THEY ARE WHEN DESCRIBED IN TERMS OF "ALL EMPLOYEES". SEE FOR EXAMPLE: MANNIX CO. LTD., O.L.R.B. MONTHLY REPORT, JANUARY, 1965, P. 526 AND A.K. PENNER & SONS LTD., O.L.R.B. MONTHLY REPORT, OCTOBER, 1966, P. 493. SUCH UNITS MAY WELL LEAD TO JURISDICTIONAL DISPUTES PARTICULARLY WHERE ONLY ONE OR TWO TRADES ARE EMPLOYED AT THE DATE OF THE MAKING OF THE APPLICATION OR WHERE AN EMPLOYER DECIDES TO EXPAND THE SCOPE OF HIS BUSINESS. WE HAVE THEREFORE COME TO THE CONCLUSION THAT, AS A GENERAL RULE, UNRESTRICTED ALL EMPLOYEE UNITS SHOULD BE AVOIDED IN CONSTRUCTION INDUSTRY CASES. RATHER, IN OUR VIEW, WHERE A UNION SEEKS A UNIT, OTHER THAN A CRAFT UNIT, THAT UNIT SHOULD BE DESCRIBED IN TERMS OF THE TRADES ON THE JOB AT THE DATE OF THE MAKING OF THE APPLICATION."

13. IT MUST BE NOTED THAT THE APPLICANT'S CLAIM TO CRAFT STATUS IS BASED SOLELY UPON DECISIONS MADE UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT AND IN OUR OPINION, MUST BE DEALT WITH ENTIRELY WITHIN THE CONFINES OF THAT SPECIAL AREA.

14. THE PRESENT CASE DOES NOT ARISE UNDER THE CONSTRUCTION INDUSTRY SECTIONS OF THE ACT. ASSUMING, HOWEVER, BUT WITHOUT SO DECIDING WITH RESPECT TO EITHER THE CONSTRUCTION INDUSTRY OR THE BROADER AREAS OF THE ACT, THAT THE APPLICANT HAS STATUS AS A CRAFT UNION, A FURTHER PROBLEM REMAINS ARISING OUT OF THE EXISTING BARGAINING UNIT. THE BARGAINING UNIT IS DESCRIBED IN ARTICLE 2 OF THE COLLECTIVE AGREEMENT UNDER THE HEADING "RECOGNITION" AS FOLLOWS:

- (A) THE COMPANY AGREES TO RECOGNIZE THE UNION AS THE SOLE COLLECTIVE BARGAINING AGENCY FOR ALL ITS EMPLOYEES, SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMEN, AND ASSISTANT FOREMEN, CLERICAL AND OFFICE STAFF, GUARDS AND PLANT PROTECTION EMPLOYEES.
- (B) THE TERM "EMPLOYEE" AS USED IN THIS AGREEMENT UNLESS IT IS CLEARLY INDICATED OTHERWISE, SHALL MEAN ONLY AN EMPLOYEE IN THE BARGAINING UNIT DEFINED ABOVE.

THE INTERVENER STATED THAT THE SAME BARGAINING UNIT HAD BEEN EMBODIED IN JOINT COLLECTIVE AGREEMENTS SINCE 1957.

15. IT IS ABUNDANTLY CLEAR THAT THE TWO UNION SIGNATORIES TO THE COLLECTIVE AGREEMENT JOINTLY REPRESENT EMPLOYEES IN A COMPOSITE BARGAINING UNIT. THE FACT THAT SEPARATE CERTIFICATES MAY HAVE BEEN ISSUED TO THE UNIONS COVERING SEPARATE BARGAINING UNITS AS WAS ALLEGED, DOES NOT HINDER THEM FROM ENTERING INTO THE TYPE OF AGREEMENT WHICH IS NOW BEFORE US. THE BARGAINING UNIT AGREED UPON IN THE COLLECTIVE AGREEMENT BECOMES THE EFFECTIVE UNIT FROM THE COMMENCEMENT OF THE OPERATION OF THE AGREEMENT FOR THE PURPOSES OF THIS APPLICATION.

16. THE APPLICANT IS CONSEQUENTLY SEEKING TO SEVER OR CARVE OUT OF THE COMPOSITE BARGAINING UNIT A CRAFT UNIT OR, WHAT IT TERMS IN THE ALTERNATIVE, AN APPROPRIATE BUT SMALLER UNIT, FROM A GENERAL OVERALL UNIT. THE MATTER THEREFORE FALLS WITHIN THAT PORTION OF SECTION 6(2) WHICH PROVIDES THAT THE BOARD SHALL NOT BE REQUIRED TO APPLY THE SUBSECTION WHERE THE GROUP OF EMPLOYEES IS INCLUDED IN A BARGAINING UNIT REPRESENTED BY ANOTHER BARGAINING AGENT AT THE TIME THE APPLICATION IS MADE. (ONTARIO PAPER CO. LTD. CASE, O.L.R.B. MONTHLY REPORT, AUGUST 1961, P. 176).

17. IN THE EXERCISE OF ITS DISCRETION BASED UPON ALL OF THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT THE UNIT PROPOSED BY THE APPLICANT IS INAPPROPRIATE IN THE CIRCUMSTANCES OF THIS CASE. THE APPLICATION IS ACCORDINGLY DISMISSED.

493-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. CADILLAC DEVELOPMENT CORPORATION LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: H. A. HERRON AND L. CASTALDO FOR THE APPLICANT, K. G. SCOTT, J. J. WEBB AND W. F. FARRAR FOR THE RESPONDENT.

DECISION OF THE BOARD: AUGUST 25, 1971.

. . .

3. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

4. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT IN BOARD CONSTRUCTION AREA #8 ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND

SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN.

5. THE REPRESENTATIVE OF THE RESPONDENT ALLEGES THAT BOTH THE APPLICANT AND THE RESPONDENT ARE BOUND BY AN EXISTING COLLECTIVE AGREEMENT DATED SEPTEMBER 20, 1969 BETWEEN THE METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION AND THE TORONTO BUILDING AND CONSTRUCTION TRADES COUNCIL (RESIDENTIAL DIVISION) ON ITS OWN BEHALF AND ON BEHALF OF THE SIGNATORY LOCAL UNIONS. THE REPRESENTATIVE OF THE RESPONDENT SUBMITS THAT THE APPLICANT IS A SIGNATORY LOCAL UNION AND THAT THE APPLICANT, IN EFFECT, ALREADY HOLDS THE BARGAINING RIGHTS FOR THE EMPLOYEES OF THE RESPONDENT FOR WHOM IT IS SEEKING CERTIFICATION. THE REPRESENTATIVE OF THE RESPONDENT ARGUES THAT IN THESE CIRCUMSTANCES THE INSTANT APPLICATION SHOULD BE DISMISSED.

6. ARTICLE 1.02 OF THE SEPTEMBER 20, 1969 AGREEMENT PROVIDES THAT MEMBERS OF LOCAL UNIONS LISTED IN SCHEDULES "A" AND "B", RESPECTIVELY, AGREE INDIVIDUALLY AND COLLECTIVELY THAT THE TERMS AND CONDITIONS OF THE AGREEMENT SHALL APPLY TO AND ARE BINDING UPON EACH OF THEM AS EVIDENCED BY THE SIGNATURES OF THEIR RESPECTIVE DULY AUTHORIZED REPRESENTATIVES. THE ATTACHED SCHEDULE "A" BEARS THE SIGNATURE OF AN AUTHORIZED REPRESENTATIVE OF THE RESPONDENT AND SCHEDULE "B" BEARS THE SIGNATURE OF AN AUTHORIZED REPRESENTATIVE OF THE APPLICANT. THE BOARD ACCORDINGLY FINDS THAT THE APPLICANT AND THE RESPONDENT ARE BOUND BY THE AGREEMENT OF SEPTEMBER 20, 1969. THE ISSUE BEFORE THE BOARD IS WHETHER THAT AGREEMENT IS A "COLLECTIVE AGREEMENT" WITHIN THE MEANING OF THE LABOUR RELATIONS ACT.

7. SECTION 32(1) OF THE ACT PROVIDES THAT EVERY AGREEMENT SHALL PROVIDE THAT THE TRADE UNION THAT IS A PARTY THERETO IS RECOGNIZED AS THE EXCLUSIVE BARGAINING AGENT OF THE EMPLOYEES IN THE BARGAINING UNIT DEFINED THEREIN. IN OTHER WORDS, IT IS A MANDATORY PROVISION OF THE ACT THAT EVERY COLLECTIVE AGREEMENT CONTAIN A RECOGNITION CLAUSE. ARTICLE 2.01 OF THE SEPTEMBER 20, 1969 AGREEMENT PROVIDES THAT THE GEOGRAPHIC AREA COVERED BY THE AGREEMENT IS BOARD CONSTRUCTION AREA #8. NOWHERE, HOWEVER, IN THE SEPTEMBER 20, 1969 AGREEMENT DOES THE METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION RECOGNIZE THE TORONTO BUILDING AND CONSTRUCTION TRADES COUNCIL AS BARGAINING AGENT FOR ANY OF THE EMPLOYEES OF THE MEMBERS OF THE ASSOCIATION WHO ARE BOUND BY THE AGREEMENT. IN LIGHT OF THIS DEFICIENCY IN THE AGREEMENT WITH RESPECT TO A MANDATORY PROVISION OF THE ACT, THE BOARD FINDS THAT THE AGREEMENT OF SEPTEMBER 20, 1969 IS NOT A COLLECTIVE AGREEMENT WITHIN THE MEANING OF THE ACT. (DUPLOTE CANADA LIMITED HAWKESBURY DIVISION CASE OLRB M.R. APRIL 1970 P. 127 AT P. 131 AND REGINA V. DAVIDSON RUBBER CO. INC. CASE 69 CLLC ¶14,190 AT PP. 771-2. SEE ALSO THE DECISION OF EVANS, J.A. IN INTERNATIONAL ASSOCIATION OF IRON WORKERS V. BRAYSHAW LTD. ET AL. 70 CLLC ¶14,084, WHEREIN HE DEFINES THE

SCOPE OF THE BOARD'S JURISDICTION IN INTERPRETING THE WORD "BOUND" IN SECTION 37 OF THE ACT FOR PURPOSES OF DETERMINING A TIMELY APPLICATION PURSUANT TO SECTION 5(1) OF THE ACT.) THE SEPTEMBER 20, 1969 AGREEMENT ACCORDINGLY IS NOT A BAR TO THE INSTANT APPLICATION.

8. THE BOARD THEREFORE FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 8, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

584-71-R: MELDRUM R. GAREAU AND EARL H. DICKSON (APPLICANTS) V. THE REPRESENTATIVES' AND TECHNICAL STAFF UNION (RESPONDENT).

(RE: CIVIL SERVICE ASSOCIATION OF ONT. (INC.))

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C.

DECISION OF THE BOARD: AUGUST 31, 1971.

1. THIS MATTER IS LISTED FOR HEARING FOR THURSDAY, SEPTEMBER 9, 1971. FOLLOWING RECEIPT OF NOTICE OF HEARING DATED AUGUST 5, 1971, COUNSEL FOR THE RESPONDENT BY LETTER DATED AUGUST 16, 1971 REQUESTED AN ADJOURNMENT OF THE HEARING ON THE GROUNDS THAT HE IS ENGAGED ON A CONCILIATION BOARD IN OTTAWA ON SEPTEMBER 8TH AND 9TH.

2. THE APPLICANTS HAVE OPPOSED THE RESPONDENT'S REQUEST FOR AN ADJOURNMENT ON THE GROUNDS THAT "1. WE FEEL THAT A HEARING TO DISCUSS THE EXAMINER'S REPORT IS UNNECESSARY 2. ANY FURTHER DELAY IN HEARING THIS APPLICATION WOULD BE A DENIAL OF NATURAL JUSTICE."

3. IT IS NOT THE BOARD'S PRACTICE TO ADJOURN A HEARING UPON THE REQUEST OF ONE PARTY UNLESS THE REQUEST FOR THE ADJOURNMENT IS BASED ON REASONS COMPLETELY BEYOND THE CONTROL OF THE PARTY (E.G. AN ESSENTIAL WITNESS HAS BEEN HOSPITALIZED, ETC.).

4. THE PARTIES IN THIS CASE HAD AMPLE NOTICE OF THE SEPTEMBER 9TH HEARING AND THE PURPOSE OF THE HEARING IS TO HEAR THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE REPORT OF THE EXAMINER DATED JULY 26, 1971. HAVING REGARD TO THE LIMITED NATURE OF THE HEARING AND THE FACT THAT COUNSEL FOR THE RESPONDENT HAD AMPLE OPPORTUNITY TO INSTRUCT OTHER COUNSEL TO ARGUE THE RESPONDENT'S POSITION, THE BOARD IS OF THE VIEW THAT NO EXTENUATING CIRCUMSTANCES EXIST IN THIS MATTER WHICH WOULD CAUSE THE BOARD TO DEPART FROM ITS USUAL PRACTICE OF REQUIRING THE CONSENT OF ALL PARTIES TO AN ADJOURNMENT.

5. THE BOARD THEREFORE DENIES THE RESPONDENT'S REQUEST FOR AN ADJOURNMENT AND THIS MATTER WILL PROCEED ON SEPTEMBER 9, 1971 PURSUANT TO THE NOTICE OF HEARING DATED AUGUST 5, 1971.

549-71-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. LELY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C.

DECISION OF THE BOARD: AUGUST 31, 1971.

1. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED AUGUST 9, 1971 AND THE REPRESENTATIONS OF THE RESPONDENT WITH RESPECT THERETO, THE BOARD FINDS THAT B. ZANDBERG IS EMPLOYED BY THE RESPONDENT AS A STUDENT ON A CO-OPERATIVE TRAINING PROGRAM WITH THE UNIVERSITY OF WATERLOO AND AS SUCH IS EXCLUDED FROM THE BARGAINING UNIT IN THIS MATTER.

2. IT IS THE BOARD'S REGULAR PRACTICE TO EXCLUDE SUCH PERSONS FROM A BARGAINING UNIT AT THE REQUEST OF EITHER PARTY. SINCE THE APPLICANT REQUESTED AT THE HEARING IN THIS MATTER THAT THIS CLASSIFICATION BE EXCLUDED FROM THE BARGAINING UNIT, THE BOARD, IN ACCORDANCE WITH ITS REGULAR PRACTICE, FINDS THAT MR. ZANDBERG IS NOT AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

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580-71-R: GENERAL DRIVERS LOCAL 989 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. HOFFMAN CONCRETE PRODUCTS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: FRANK V. BOSCARIOL, VICE CHAIRMAN AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: I. J. THOMSON, ROD MCFARLANE AND JO BUCHANAN APPEARING FOR THE APPLICANT; IVAN HOFFMAN AND DONALD HOFFMAN APPEARING FOR THE RESPONDENT; AND CLIFFORD PEEVER APPEARING FOR THE OBJECTORS.

DECISION OF THE BOARD: AUGUST 3, 1971.

1. THE NAME "HOFFMAN CONCRETE PRODUCTS LTD." APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "HOFFMAN CONCRETE PRODUCTS LIMITED".

2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

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7. THERE IS ALSO ON FILE WITH THE BOARD A LETTER FROM THE APPLICANT DATED JULY 5, 1971, CHARGING, IN EFFECT, EMPLOYER INTERFERENCE SHORTLY AFTER THE COMMENCEMENT OF THE APPLICANT'S ORGANIZATIONAL CAMPAIGN. AT THE HEARING OF THIS MATTER ON JULY 8, 1971, THE APPLICANT SUBMITTED THAT THE CONDUCT OF THE RESPONDENT, IN THIS REGARD, WAS OF SUCH A NATURE THAT A REPRESENTATION VOTE WOULD NOT BE LIKELY TO DISCLOSE THE TRUE WISHES OF THE EMPLOYEES IN THE BARGAINING UNIT. THE APPLICANT ACCORDINGLY REQUESTED THAT THE BOARD EXERCISE THE DISCRETION VESTED IN IT, PURSUANT TO SECTION 7(5) OF THE ACT AND CERTIFY THE APPLICANT WITHOUT THE TAKING OF A REPRESENTATION VOTE.

8. IN THIS REGARD, THE APPLICANT CALLED THREE EMPLOYEES OF THE RESPONDENT. THE EVIDENCE OF EARL KUTSCHKE DISCLOSES THAT HE SPOKE TO IVAN HOFFMAN, DESCRIBED AS PART-OWNER OF THE RESPONDENT, ON JUNE 25, 1971, WHEREIN HE WAS ASKED TO WRITE A LETTER TO THE BOARD AGAINST THE UNION. THE WITNESS ALSO INDICATED THAT A 25¢ PER HOUR RAISE WAS OFFERED TO HIM AT THIS TIME. EDGAR WRIGHT, ALTHOUGH, INITIALLY HIS TESTIMONY WAS SOMEWHAT CONFUSED, SUBSEQUENTLY STATED THAT IVAN HOFFMAN IN THE PRIVACY OF HIS CAR REQUESTED THAT HE SIGN A LETTER AGAINST THE UNION ON THE SAME DATE, NAMELY JUNE 25TH. IN THIS REGARD, HE STATED THAT HE WAS BROUGHT TO UNDERSTAND THAT IF THE UNION WAS NOT SUCCESSFUL, HE WOULD GET A 25¢ RAISE. GARRY RABISHAW'S TESTIMONY IS TO THE EFFECT THAT IVAN HOFFMAN ADOPTED THE SAME PROCEDURE WITH HIM

ON JUNE 23, 1971. HE STATED THAT HE DID IN FACT CONCEDE TO HOFFMAN'S REQUEST AND WROTE THE LETTER WORD FOR WORD AS WAS DICTATED TO HIM BY HOFFMAN, WHO HAD ALSO SUPPLIED THE PAPER, PEN AND ENVELOPE. HE FURTHER STATED THAT AFTER SIGNING THE LETTER HE SEALED IT IN AN UNSTAMPED ENVELOPE AND RETURNED IT TO HOFFMAN. A REVIEW OF THIS LETTER, (FILED AS EXHIBIT #2) REVEALS THAT IT RECEIVED THE BOARD'S DATE STAMP AND IS ONE OF THE STATEMENTS OF DESIRE FOUND TO BE UNACCEPTABLE TO THE BOARD FOR THE REASON AS OUTLINED IN PARAGRAPH 6, HEREIN. THE WITNESS ALSO INDICATED THAT UPON REPLYING IN THE AFFIRMATIVE TO HOFFMAN'S QUESTION AS TO WHETHER HE HAD SIGNED A CARD, WAS ASKED TO PRODUCE IT, AND MARK AN "X" ACROSS IT. THIS DOCUMENT WAS PRODUCED AT THE HEARING AND MARKED AS EXHIBIT #3. WHEN RABISHAW ASKED HIM ABOUT THE TWO DOLLARS HE PAID FOR THE RECEIPT, HOFFMAN REPLIED THAT HE NEED NOT WORRY ABOUT THIS AS THE MATTER WOULD BE STRAIGHTENED UP LATER. THE WITNESS STATED THAT HOFFMAN INSTRUCTED HIM AT THIS TIME NOT TO TELL ANYONE ABOUT THIS SITUATION AS IT WAS AGAINST THE LAW. UPON CROSS-EXAMINATION BY HOFFMAN, THE WITNESS REMAINED STEADFAST AND UNSHAKEN IN HIS TESTIMONY AND FURTHER INDICATED THAT HIS EMPLOYER "HAD SPELT EVERYTHING OUT" CONCERNING WHAT WOULD HAPPEN IF THE UNION WERE TO COME IN.

9. IN DEFENCE TO THESE CHARGES, THE RESPONDENT CALLED THREE OF ITS EMPLOYEES, NAMELY DAVID HUDSON, EDWARD MIELKE AND DENNIS MCCORMAC, ALL OF WHOM TESTIFIED THAT THEY WERE NOT APPROACHED BY HOFFMAN CONCERNING THE UNION, NO OFFER OF A WAGE INCREASE WAS MADE TO THEM AND THAT NO THREATS WERE MADE TO THEM AT THE RELEVANT TIMES.

10. AS WAS STATED IN THE PARAGON TOOLS COMPANY, LIMITED CASE, O.L.R.B., M.R., DECEMBER 1969, P.1051, AT P.1053:

"THE PURPOSE OF SECTION 7(5) OF THE ACT IS IN PROPER CASES, TO PRESERVE THE RIGHTS OF A MAJORITY OF EMPLOYEES WHO ARE MEMBERS OF A TRADE UNION TO THEIR REPRESENTATIVE RIGHTS UNDER THE ACT. IT IS NOT SUFFICIENT TO ARGUE THAT THE REPRESENTATIVE VOTE PROCESS SHOULD BE ADHERED TO IN ALL CASES WHATSOEVER SOLELY BECAUSE IT IS DEMOCRATIC TO DO SO. OBVIOUSLY, THE LEGISLATURE IN ENACTING THIS SECTION PERCEIVED SITUATIONS WHERE A VOTE EVEN THOUGH BY SECRET BALLOT WOULD NOT DISCLOSE THE TRUE WISHES OF THE EMPLOYEES CONCERNED BECAUSE OF UNDUE INFLUENCE BROUGHT TO BEAR ON THEM. THE WHOLE TENOR OF THIS SECTION OF THE ACT IS TO PROVIDE FOR THE DETER-

MINATION OF THE WISHES OF THE EMPLOYEES AND NOT THOSE OF EITHER A UNION OR THEIR EMPLOYER. IN A NORMAL SITUATION WHERE THERE IS DOUBT AS TO THE WISHES OF THE EMPLOYEES, A REPRESENTATION VOTE MAY BE THE RIGHT WAY TO DETERMINE SUCH MATTERS BUT WHERE, AS IN THE PRESENT CASE, INFLUENCE IS ALLEGED, SUBJECT TO THE ONUS OF PROVING SUCH INFLUENCE BY SUBSTANTIAL, COMPELLING EVIDENCE, THE BOARD MAY EXERCISE ITS DISCRETION IN ACCORDANCE WITH THE INTENT OF THE LEGISLATURE IN THIS REGARD. THIS ONUS ON THE PARTY INVOKING THIS SECTION DOES NOT HAVE TO BE SATISFIED BY ABSOLUTE PROOF TO ALL MATERS; REASONABLE AND PROPER INFERENCES CAN AND MUST BE DRAWN FROM THE EVIDENCE PUT BEFORE THE BOARD. WHERE SUCH EVIDENCE SUPPORTS THE CHARGES THEN THE BOARD CANNOT IGNORE THE PROVISIONS OF SECTION 7(5) TO THE DETRIMENT OF THE MAJORITY WHO HAVE ALREADY FREELY INDICATED THEIR DESIRE. FURTHERMORE, IT IS NOT ENOUGH TO ARGUE THAT IF THE UNION STILL ENJOYS A MAJORITY SUPPORT THEN A VOTE WILL NOT HURT THEM BUT ONLY CONFIRM THEIR STAND, THE WHOLE THRUST OF THIS SECTION IS PREMISED ON THE FINDING THAT A VOTE IN ALL THE CIRCUMSTANCES WILL NOT DISCLOSE THE TRUE WISHES OF THE EMPLOYEES BECAUSE OF THE OTHER FACTORS AFOREMENTIONED."

AND FURTHER AT PAGE 1054:

"THE BOARD HAS ALWAYS RECOGNIZED THE RESPONSIVENESS OF EMPLOYEES TO IDENTIFY THEIR WISHES TO THAT OF THEIR EMPLOYER, AND BECAUSE OF THAT RELATIONSHIP CAN BE INFLUENCED TO ACT AGAINST THEIR OWN INTERESTS. THE ACT ATTEMPTS TO PROVIDE RELIEF TO SUCH SITUATIONS WHERE THE INFLUENCE EXERTED BY MANAGEMENT ON THE EMPLOYEES IS

COERCIVE. SEE PRESTON & SONS LIMITED CASE, 1957 CCH CLR TRANSFER BINDER 155-59, P. 16,089; WOLVERINE TUBE LTD. CASE, 63 CLLC 1226; PIGOTT MOTORS CASE, 63 CLLC 1125."

11. HAVING CAREFULLY REVIEWED ALL THE EVIDENCE ADDUCED IN THIS REGARD, WE FIND THAT THE RESPONDENT DID ENGAGE IN COERCIVE ACTIVITIES TOWARDS ITS EMPLOYEES. EVIDENCE ON THE PART OF SOME OF THE EMPLOYEES THAT THE RESPONDENT DID NOT PERSONALLY TREAT THEM IN THIS FASHION DOES NOT, IN OUR OPINION, OUTWEIGH THE EVIDENCE OF MANAGEMENT INTERFERENCE. THE CUMMULATIVE EFFECTS OF THE CONDUCT OF THE RESPONDENT THEREFORE IS SUCH THAT IN THE RESULT THE EMPLOYEE'S ABILITY TO MAKE A "FREE CHOICE" IS DESTROYED. ACCORDINGLY, WE FIND THAT A REPRESENTATIVE VOTE IN THIS CIRCUMSTANCES IS NOT LIKELY TO DISCLOSE THE TRUE WISHES OF THE EMPLOYEES.

12. THE BOARD THEREFORE IN THE EXERCISE OF ITS DISCRETION UNDER SECTION 7(5) OF THE ACT, FINDS THAT THE APPLICANT HAS ESTABLISHED ITS ENTITLEMENT TO OUTRIGHT CERTIFICATION WITHOUT THE TAKING OF A REPRESENTATION VOTE.

13. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

821-71-R: HOTELS, CLUBS, RESTAURANTS, TAVERN EMPLOYEES UNION LOCAL 261, OTTAWA, ONTARIO, AFFILIATED WITH AFL-CIO-CLC (APPLICANT) V. COMMONWEALTH HOLIDAY INNS OF CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG, B. CHERCOVER, FRANK GRELLA AND JAMES GRAHAM FOR THE APPLICANT; COLIN MORLEY, C. H. KING, CHARLES CLINE AND G. KNIEHL FOR THE RESPONDENT; BERNARD RYAN FOR THE OBJECTORS.

DECISION OF THE BOARD: AUGUST 31, 1971.

1. THE APPLICANT HAS CHALLENGED THE LIST OF EMPLOYEES FILED BY THE RESPONDENT. IN THESE CIRCUMSTANCES, MR. J. E. LEONARD, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE SCOPE AND COMPOSITION OF THE BARGAINING UNIT, INCLUDING THE FOLLOWING MATTERS:

- (A) THE LIST OF EMPLOYEES FILED BY THE RESPONDENT INCLUDING THE QUESTION AS TO WHICH OF THESE EMPLOYEES MAY BE CLASSIFIED AS STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD.

(B) THE DUTIES AND RESPONSIBILITIES OF:

M. MICHAUD, CLASSIFIED BY THE RESPONDENT AS BARTENDER, AND H. L. PHILLIPS, CLASSIFIED BY THE RESPONDENT AS SOUS CHEF.

2. IMMEDIATELY PRIOR TO THE HEARING OF THIS MATTER THE OBJECTORS WERE HANDED A COPY OF A LETTER RECEIVED FROM THE APPLICANT, DATED AUGUST 24, 1971 AND RECEIVED BY THE BOARD ON AUGUST 25, 1971. THE RESPONDENT ADMITTED TO RECEIPT OF THIS LETTER THE DAY PRIOR TO THE HEARING OF THIS MATTER ON AUGUST 26, 1971. THE LETTER, IN EFFECT, CHARGES MANAGEMENT INFLUENCE IN THE FOUR STATEMENTS OF DESIRE FILED WITH THE BOARD AND THE APPLICANT SEEKS TO INVOKE THE PROVISIONS OF SECTION 7(5) OF THE ACT IN THESE CIRCUMSTANCES.

3. THE BOARD ACCORDINGLY HEARD REPRESENTATIONS FROM THE PARTIES AS TO WHETHER THESE CHARGES SHOULD BE ENTERTAINED HAVING REGARD TO THE TIME IN WHICH THEY WERE FILED. IN THIS REGARD, THE APPLICANT FURTHER ALLEGED THAT ONE OF THE REASONS FOR THE DELAY IN FILING THESE CHARGES WAS DUE TO THE FAILURE OF CERTAIN EMPLOYEES TO IMMEDIATELY COME FORWARD WITH THE PARTICULARS OF THE CHARGES REFERRED TO IN THE APPLICANT'S LETTER, FOR FEAR OF REPRISALS FROM THE RESPONDENT. THE MAJORITY OF THE BOARD, MR. BELL DISSENTING, ACCORDINGLY RULED THAT SUCH A REASON WAS RELEVANT TO THE QUESTION OF DELAY. ALTHOUGH THE APPLICANT WAS PREPARED TO CALL EVIDENCE REGARDING THIS ALLEGATION AT THE HEARING, THE RESPONDENT INDICATED IT WAS NOT PREPARED TO MEET THIS ISSUE AT THIS TIME. THE BOARD, ACCORDINGLY, IN THESE CIRCUMSTANCES, ORDERED AN ADJOURNMENT OF THE HEARING UPON THIS ISSUE, PENDING RECEIPT FROM THE APPLICANT OF WRITTEN PARTICULARS IN THIS REGARD.

834-71-R: PRINTING SPECIALTIES AND PAPER PRODUCTS UNION, LOCAL 466 (APPLICANT) V. DATA BUSINESS FORMS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: L. ARNOLD, F. STEELE AND E. HODGES FOR THE APPLICANT; W. G. PHELPS FOR THE RESPONDENT; J. L. MARTIN AND D. W. HUGHES FOR THE OBJECTORS.

DECISION OF THE BOARD: AUGUST 31, 1971.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

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5. MESSRS. HUGHES AND MARTIN APPEARED FOR THE EMPLOYEES AND TESTIFIED WITH RESPECT TO THEIR PERSONAL KNOWLEDGE AND OBSERVATIONS AS TO THE MANNER IN WHICH THE SIGNATURES APPEARING ON THIS STATEMENT WERE OBTAINED. AS REGARDS THE "OVERLAPS", ONLY THE EVIDENCE OF MR. MARTIN IS DIRECTLY RELATED TO THE SIGNATORIES IN THIS GROUP. HIS TESTIMONY IN THIS RESPECT WOULD FURTHER APPEAR TO BE RESTRICTED TO HIS PERSONAL KNOWLEDGE AS TO THE MANNER IN WHICH ONLY ONE OF THESE SIGNATURES WAS OBTAINED. IN OTHER WORDS, THERE IS NO DIRECT EVIDENCE CONCERNING THE OBTAINING OF THE SIGNATURES OF THE REMAINING 8 EMPLOYEES IN THIS GROUP. ACCORDINGLY, EVEN IF WE WERE TO GIVE WEIGHT TO THIS STATEMENT, THE EFFECTIVE OVERLAP IS REDUCED TO ONE SIGNATURE. THIS WOULD STILL LEAVE THE APPLICANT WITH CLEAR EVIDENCE OF MEMBERSHIP FOR 43 OF THE 65 EMPLOYEES IN THE BARGAINING UNIT WHICH IS SUFFICIENT TO ENTITLE IT TO OUTRIGHT CERTIFICATION.

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7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

688-71-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. WOODWAY STRUCTURAL COMPONENTS (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: J. SACK, J. C. HORAN AND E. H. GRIFFITH FOR THE APPLICANT, E. L. STRINGER, Q.C., E. FOWLER AND A. LAVER FOR THE RESPONDENT, P. VARHELYI, K. BUTTON, J. J. RICHARD AND R. M. VEAL FOR THE OBJECTORS.

DECISION OF THE BOARD: AUGUST 31, 1971.

1. THE APPLICANT IS APPLYING PURSUANT TO SECTION 47A OF THE ACT FOR A DECLARATION THAT, AS A RESULT OF THE SALE OF A BUSINESS BY ENGINEERED TIMBER PRODUCTS, A DIVISION OF GLULAM PRODUCTS LIMITED TO THE RESPONDENT, THE RESPONDENT IS BOUND BY THE COLLECTIVE AGREEMENT WHICH WAS IN EFFECT BETWEEN BHE APPLICANT AND THE VENDOR COMPANY.

2. COUNSEL FOR THE APPLICANT ADDUCED NO EVIDENCE IN SUPPORT OF HIS CONTENTION THAT THERE HAD BEEN A SALE OF A BUSINESS OTHER THAN MAKING A REPRESENTATION THAT THE ALLEGED TRANSACTION OF PURCHASE AND SALE TOOK PLACE IN THE MONTH OF APRIL OR MAY OF THIS YEAR. THE RESPONDENT FOR ITS PART DENIED THAT THERE HAD BEEN A SALE OF THE BUSINESS OF ENGINEERED TIMBER PRODUCTS, A DIVISION OF GLULAM PRODUCTS LIMITED TO WOODWAY STRUCTURAL COMPONENTS.

3. COUNSEL FOR THE APPLICANT ASSERTS THAT UNDER SECTION 47A OF THE ACT, THE PRIMARY EVIDENTIARY BURDEN OF AFFIRMING OR DENYING THE FACT OF THE SALE OF THE BUSINESS RESTS WITH THE RESPONDENT SINCE THE TRANSACTION THAT TOOK PLACE BETWEEN THE TWO COMPANIES IS KNOWLEDGE PECULIARLY IN THE POSSESSION OF THE RESPONDENT. COUNSEL FOR THE APPLICANT CITED A NUMBER OF JUDICIAL AUTHORITIES WHICH HE SUBMITS SUPPORT HIS POSITION. COUNSEL FOR THE RESPONDENT, ON THE OTHER HAND, SUBMITTED THAT SINCE THE APPLICANT IS CLAIMING THE FACT OF A SALE THE ONUS IS UPON IT TO ADDUCE EVIDENCE WHICH SUPPORTS SUCH A FINDING. IN THE ALTERNATIVE, COUNSEL FOR THE RESPONDENT SUBMITTED, THAT, AT THE VERY LEAST, IT IS INCUMBENT UPON THE APPLICANT TO ESTABLISH IN EVIDENCE A PRIMA FACIE CASE THAT THERE WAS A SALE OF A BUSINESS AND THAT THE APPLICANT HAD FAILED TO MEET THIS MINIMUM REQUIREMENT. IN THESE CIRCUMSTANCES, COUNSEL FOR THE RESPONDENT ARGUED THAT THE BOARD SHOULD DISMISS THE APPLICATION.

4. IN THE SUPER CITY LIMITED CASE OLRB M.R. MAY 1964 P. 93, WHICH WAS ONE OF THE FIRST APPLICATIONS MADE UNDER SECTION 47A OF THE ACT, THE REPRESENTATIVE OF THE APPLICANT SUBMITTED THAT ON THE BASIS OF THE EVIDENCE THE BOARD OUGHT TO CONDUCT FURTHER INQUIRIES ON ITS OWN INITIATIVE AS TO WHETHER THERE HAD BEEN A SALE OF A BUSINESS AS THE FACTS LAY PECULIARLY WITHIN THE KNOWLEDGE OF THE RESPONDENT PURCHASER AND WERE NOT KNOWN TO THE APPLICANT. THE BOARD IN ITS DECISION STATED THAT IT HAD NEVER UNDERTAKEN TO CONDUCT THE SORT OF INQUIRY THAT WOULD BE NECESSARY IF THE BOARD WERE TO ACCEPT THE SUBMISSION OF THE REPRESENTATIVE OF THE APPLICANT. THE BOARD HELD RATHER THAT THE ONUS RESTS ON THE APPLICANT TO PRODUCE BEFORE THE BOARD THE ESSENTIAL EVIDENCE UPON WHICH IT SOUGHT TO BASE ITS CLAIM FOR RELIEF UNDER SECTION 47A OF THE ACT. THE BOARD POINTED OUT THAT THE APPLICANT COULD HAVE CALLED AS WITNESSES OFFICERS OR OFFICIALS OF THE COMPANIES CONCERNED AND THAT IT COULD HAVE TAKEN OUT SUMMONSES REQUIRING THESE OFFICIALS TO PRODUCE AT THE HEARING OF THE BOARD THE RELEVANT DOCUMENTS. THE BOARD FOUND THAT THE APPLICANT'S INVESTIGATION OF THE CIRCUMSTANCES WAS OF A SUPERFICIAL NATURE AND DISMISSED THE APPLICATION. THE POSITION OF THE BOARD IN THE ABOVE CASE WAS REAFFIRMED IN A LATER DECISION OF THE BOARD IN THE SUPER CITY DISCOUNT FOODS LIMITED CASE OLRB M.R. AUGUST 1969 P. 666.

5. COUNSEL FOR THE APPLICANT DREW ATTENTION TO THE STATEMENT OF THE BOARD IN THE EARLIER SUPER CITY CASE THAT NO RULES OF PROCEDURE HAD BEEN FORMULATED AT THAT TIME WITH RESPECT TO APPLICATIONS FOR RELIEF UNDER SECTION 47A AND THAT THE DISMISSAL OF THE APPLICATION WAS WITHOUT PREJUDICE TO THE RIGHT OF THE APPLICANT TO RAISE THE ISSUE AGAIN IN A LATER CASE. COUNSEL FOR THE APPLICANT ARGUED THAT THE BOARD NOW HAS CONSIDERABLY GREATER EXPERIENCE IN DEALING WITH APPLICATIONS UNDER SECTION 47A. IN LIGHT OF THIS EXPERIENCE, COUNSEL URGED THE BOARD TO RECONSIDER ITS POSITION WITH RESPECT TO

THE ONUS WHICH, UNTIL THE PRESENT, IT HAS PLACED UPON THE APPLICANT.

6. IN ACCORDANCE WITH THE REQUEST OF COUNSEL FOR THE APPLICANT, THE BOARD HAS RECONSIDERED ITS POSITION. IN DOING SO THE BOARD HAS TAKEN INTO ACCOUNT THE SUBMISSIONS OF THE PARTIES AND CAREFULLY APPRAISED THOSE JUDICIAL AUTHORITIES RELEVANT TO A DETERMINATION OF THE ISSUE RAISED BY THE APPLICANT. OUR CONCLUSIONS, BASED ON THE FOREGOING, ARE SET FORTH BELOW.

7. THE EXPRESSION "BURDEN OF PROOF" APPLIES BOTH TO THE BURDEN OF ADDUCING EVIDENCE DURING THE PROGRESS OF A JUDICIAL OR QUASI-JUDICIAL PROCEEDING AND THE BURDEN OF ESTABLISHING AN ISSUE WHICH REMAINS TO THE END OF THE PROCEEDING. THE EVIDENTIARY BURDEN CAN BE DESCRIBED AS THE SHIFTING BURDEN WHEREAS THE BURDEN OF ESTABLISHING AN ISSUE CAN PROPERLY BE DESCRIBED AS THE LEGAL BURDEN. AS A GENERAL RULE THE PARTY UPON WHOM THE LEGAL BURDEN LIES AND WHO DESIRES A TRIBUNAL TO TAKE ACTION MUST PROVE ITS CASE TO THE SATISFACTION OF THE TRIBUNAL. THIS MEANS THAT THE LEGAL BURDEN OF PROVING ALL FACTS ESSENTIAL TO A CLAIM RESTS ON THE PARTY MAKING THE CLAIM. IN OTHER WORDS THE PROPOSITION THAT "HE WHO ASSERTS MUST PROVE" REFERS TO THE LEGAL BURDEN WHEREIN A PARTY WHO IS SEEKING RELIEF MUST SATISFY THE TRIBUNAL CONCERNED AS TO THE LEGITIMACY OF HIS CLAIM. AT A PARTICULAR STAGE OF A HEARING, A PARTY WHO AFFIRMS THE EXISTENCE OF A FACT MAY HAVE SATISFIED AN INITIAL ONUS AS A RESULT OF WHICH THE EVIDENTIARY BURDEN SHIFTS TO THE OTHER PARTY TO REBUT THE EXISTENCE OR OTHERWISE OF THE FACT ESTABLISHED. THE EVIDENTIARY BURDEN MAY SHIFT BACK AND FORTH DURING THE COURSE OF A HEARING, IN THE END, HOWEVER, THE TRIBUNAL MUST BE SATISFIED THAT THE INITIATOR OF THE PROCEEDINGS, ON THE BASIS OF THE EVIDENCE SUBMITTED, HAS MET THE LEGAL BURDEN.

8. IN GENERAL, THE EFFECT OF "PECULIAR KNOWLEDGE" IS THAT IT MAY MEAN THAT VERY LITTLE EVIDENCE IS REQUIRED TO SATISFY THE EVIDENTIARY BURDEN WHEN IT RESTS UPON THE PARTY LACKING SUCH KNOWLEDGE. THIS DOES NOT MEAN, HOWEVER, THAT SIMPLY BECAUSE KNOWLEDGE IS PECULIAR TO ONE OF THE PARTIES THAT THE OTHER IS RELIEVED OF THE BURDEN OF ADDUCING SOME EVIDENCE WITH REGARD TO THE FACT IN QUESTION. HOWEVER, WHERE A PARTY INITIATES PROCEEDINGS REQUESTING A TRIBUNAL TO INVOKE THE "FACT PECULIAR WITHIN THE KNOWLEDGE..." RULE, REFERENCE IS BEING MADE TO THE EVIDENTIARY BURDEN AND NOT NECESSARILY TO THE LEGAL BURDEN. THE LATTER BURDEN RESTS THROUGHOUT ON THE PARTY SEEKING RELIEF OF THE TRIBUNAL, UNLESS THE WORDING OF THE STATUTE OTHERWISE PROVIDES.

9. THE NATURE OF THE RELIEF REQUESTED BY THE APPLICANT UNDER SECTION 47A NECESSITATES ESTABLISHING THE EXISTENCE OF A SALE, WHICH IS A POSITIVE ASSERTION. THERE IS NO LEGISLATIVE DIRECTIVE IN THE LANGUAGE OF SECTION 47A THAT CONFERS UPON THE BOARD THE JURISDICTION TO REQUIRE A RESPONDENT TO ADDUCE EVIDENCE, IN THE FIRST INSTANCE,

ESTABLISHING THAT A SALE HAS NOT TRANSPIRED, EVEN THOUGH THIS FACT MAY BE PECULIARLY WITHIN ITS KNOWLEDGE, AT LEAST UNTIL THE APPLICANT HAS RAISED A PRESUMPTION. THIS IS IN CONTRAST TO THE SITUATION WHERE AN APPLICANT IS SEEKING RELIEF UNDER SECTION 45A OF THE ACT. BY THE PROVISIONS OF THAT SECTION, DURING THE FIRST YEAR OF A COLLECTIVE AGREEMENT ENTERED INTO FOLLOWING VOLUNTARY RECOGNITION, WHERE AN EMPLOYEE IN THE BARGAINING UNIT COVERED BY THE AGREEMENT OR A TRADE UNION REPRESENTING ANY EMPLOYEES IN THE UNIT CHALLENGES THE AGREEMENT, THE LEGISLATURE HAS DIRECTED THAT THE ONUS OF PROOF RESTS ON THE PARTY UPHOLDING THE AGREEMENT TO ESTABLISH THAT THE TRADE UNION WAS ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE AGREEMENT WAS EXECUTED. WE WOULD MENTION IN PASSING THAT IN THE LOB-LAW GROCETERIAS Co. LTD. CASE 66 CLLC 916,078 AT P. 893, THE BOARD EXPRESSED ITS RELUCTANCE TO INTERPRET THE ACT IN A MANNER THAT WOULD APPEAR TO FLY IN THE FACE OF THE LANGUAGE OF THE ACT IN THE ABSENCE OF A CLEAR LEGISLATIVE INTENT TO THAT EFFECT.

10. FINALLY, WITH REFERENCE TO THE AUTHORITIES CITED BY COUNSEL FOR THE APPLICANT, THEY RELATE LARGELY TO THE "FACT PECULIAR WITHIN THE KNOWLEDGE..." RULE AS IT APPLIES TO THE CONSTRUCTION OF CONTRACTS FOR THE CARRIAGE OF GOODS AND INSURANCE AGAINST VARIOUS TYPES OF LOSS. THE APPLICANT IS ASKING THE BOARD TO APPLY GENERALLY A RULE OF EVIDENCE THAT OWES ITS LEGITIMACY TO THE INTERPRETATION OF THE LANGUAGE OF A PARTICULAR STATUTE OR CONTRACT GIVING RISE TO PROCEEDINGS BEFORE A TRIBUNAL. COUNSEL FOR THE APPLICANT APPEARS TO HAVE DISREGARDED THE FACT THAT THE APPLICABILITY OF THE RULE IS ROOTED IN THE INTENT OF THE LEGISLATURE. IN OUR VIEW, THE AUTHORITIES CITED BY COUNSEL FOR THE APPLICANT HAVE LITTLE, IF ANY, RELEVANCE TO THE RULE AS IT APPLIES TO SECTION 47A OF THE ACT.

11. THE BOARD HAS CONSIDERED INTER ALIA THE FOLLOWING AUTHORITIES IN ARRIVING AT ITS DETERMINATION ON THE ISSUE RAISED BY COUNSEL FOR THE APPLICANT. CROSS ON EVIDENCE 3RD ED.; BARTLETT V. N.S. STEEL Co. (1906) 39 N.S.R. 456, AFFIRMED 38 S.C.R. 336; DICKINSON V. MINISTER OF PENSIONS [1952] 2 All E.R. 1031; ONTARIO EQUITABLE LIFE Co. V. BAKER [1926] 2 D.L.R. 289 (SCC); R. V. TURNER (1816) 13 M & W 655; REX V. ROHER (1947) OWN 935 (CA); REGINA V. CAMERON (1966) 58 D.L.R. (2D) 486; PLEET V. CANADIAN NORTHERN QUEBEC R. Co. [1923] 4 D.L.R. 1112 (SCC); PORTAGE MILLING AND TRANSFER Co. V. GRAND TRUNK PACIFIC R. Co. [1923] 3 D.L.R. 84; FORD MOTOR COMPANY & BOARD OF TRUSTEES OF ROMAN CATHOLIC SEPARATE SCHOOLS FOR WINDSOR V. BOARD OF EDUCATION OF WINDSOR [1938] 3 D.L.R. 298 (CA); JOHN RICHIE V. CANADIAN BANK OF COMMERCE [1963] 1 O.R. 197 (CA).

12. SINCE THE APPLICANT FAILED TO ADDUCE ANY EVIDENCE THAT WOULD ESTABLISH EVEN PRIMA FACIE THE FACT OF A SALE OF A BUSINESS, WHICH IS A PREREQUISITE FOR THE RELIEF WHICH IT IS SEEKING, THE APPLICATION MUST BE AND IS HEREBY DISMISSED.

18909-70-M: GOLDSTEIN FOODMART LTD. (EMPLOYER) V. RETAIL CLERKS UNION, LOCAL 486 CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION (TRADE UNION) V. CANADIAN MERCHANDISING EMPLOYEES' UNION (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS O. HODGES AND W. H. WIGHTMAN.

APPEARANCES AT THE HEARING: R. C. FILION AND J. GOLDSTEIN FOR THE EMPLOYER; J. A. RYDER AND B. H. BAILY FOR THE TRADE UNION; JOHN NEL- LIGAN AND THOMAS REES FOR THE INTERVENER.

DECISION OF THE BOARD: AUGUST 31, 1971.

1. UPON THE REQUEST OF COUNSEL FOR THE TRADE UNION (HEREINAFTER REFERRED TO AS LOCAL 486) AND WITH THE AGREEMENT OF COUNSEL FOR THE EMPLOYER (HEREINAFTER REFERRED TO AS GOLDSTEIN) THE CANADIAN MERCHANDISING EMPLOYEES' UNION (HEREINAFTER REFERRED TO AS CMEU) IS ADDED AS A PARTY TO THESE PROCEEDINGS.

2. THE MINISTER HAS REFERRED TO THE BOARD, PURSUANT TO SECTION 79A OF THE ACT, THE QUESTION AS TO WHETHER HE HAD THE AUTHORITY TO APPOINT A CONCILIATION OFFICER. WITHOUT RESTRICTING THE GENERALITY OF THE FOREGOING, THE BOARD HAS BEEN ASKED TO ANSWER THE FOLLOWING QUESTIONS:

1. WAS LOCAL 486 CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION (HEREINAFTER REFERRED TO AS THE ASSOCIATION) A VALID AND SUBSISTING TRADE UNION AT THE TIME A REQUEST WAS MADE TO THE MINISTER FOR THE APPOINTMENT OF A CONCILIATION OFFICER UNDER THE PROVISIONS OF SECTION 13 OF THE ACT?
2. HAVING REGARD TO THE ANSWER TO QUESTION 1, HAD THERE BEEN A VALID NOTICE SERVED UNDER SECTION 40 OF THE ACT REQUIRING THE MINISTER TO APPOINT A CONCILIATION OFFICER UNDER THE PROVISIONS OF SECTION 13(1)?
3. IN THE EVENT THAT IT IS FOUND THAT THERE HAS BEEN NO COMPLIANCE WITH SECTION 13(1) WAS THE SAID LOCAL 486 A "PARTY" WITHIN THE MEANING OF THE ACT SO AS TO PERMIT THE MINISTER TO APPOINT A CONCILIATION OFFICER UNDER THE PROVISIONS OF SECTION 13(2)?

3. ON SEPTEMBER 30, 1970, TED KEHOE, AN INTERNATIONAL REPRESENTATIVE OF THE ASSOCIATION, REQUESTED THAT THE MINISTER APPOINT A CONCILIATION OFFICER TO CONFER WITH LOCAL 486 AND GOLDSTEIN IN AN ENDEAVOUR TO EFFECT A COLLECTIVE AGREEMENT. BY LETTER DATED OCTOBER 14, 1970, THE PARTIES WERE ADVISED THAT THE MINISTER HAD APPOINTED A CONCILIATION OFFICER.

4. BY LETTER DATED DECEMBER 17, 1970 ADDRESSED TO THE MINISTER, THE SOLICITORS FOR CMEU ALLEGED THAT LOCAL 486 DID NOT EXIST AT THE TIME THE MINISTER'S APPOINTMENT OF A CONCILIATION OFFICER WAS MADE AND THAT THE APPOINTMENT THEREFORE WAS INVALID. COUNSEL SUBMITTED THAT A QUESTION HAD ARISEN RELATING TO THE MINISTER'S AUTHORITY TO MAKE THE APPOINTMENT OF THE CONCILIATION OFFICER ON OCTOBER 14, 1970 AND REQUESTED THAT THE MATTER BE REFERRED TO THE BOARD. IN COMPLIANCE WITH THE REQUEST, THE MINISTER HAS REFERRED THE ISSUE RAISED BY COUNSEL FOR CMEU TO THE BOARD. THE RELEVANT EVIDENCE ADDUCED AT THE HEARING ON THE REFERENCE IS OUTLINED BELOW.

5. THE ASSOCIATION WAS CERTIFIED BY THE BOARD ON JULY 2, 1962 AS BARGAINING AGENT FOR A UNIT OF FULL-TIME AND A UNIT OF PART-TIME EMPLOYEES OF CENTRAL SUPERMARKETS LIMITED AT ITS FOUR RETAIL STORES IN OTTAWA AND ITS ONE RETAIL STORE IN EASTVIEW. IN THE FALL OF 1962, LOCAL 486 ENTERED INTO TWO COLLECTIVE AGREEMENTS WITH CENTRAL SUPERMARKETS LIMITED COVERING THE UNITS OF EMPLOYEES FOR WHICH THE ASSOCIATION HAD BEEN CERTIFIED. THE SAME PARTIES ENTERED INTO SUBSEQUENT COLLECTIVE AGREEMENTS. IN 1965 CENTRAL SUPERMARKETS LIMITED SOLD ITS ELGIN STREET STORE IN OTTAWA TO GOLDSTEIN. GOLDSTEIN RECOGNIZED LOCAL 486 AS BARGAINING AGENT FOR ITS FULL-TIME AND PART-TIME EMPLOYEES AT THE ELGIN STREET STORE AND COMPLIED WITH THE TERMS AND CONDITIONS OF THE COLLECTIVE AGREEMENTS THEN IN EFFECT BETWEEN LOCAL 486 AND CENTRAL SUPERMARKETS LIMITED. IN 1966 LOCAL 486 AND GOLDSTEIN ENTERED INTO COLLECTIVE AGREEMENTS COVERING THE SAME UNITS OF EMPLOYEES. THE EXPIRY DATE OF THESE AGREEMENTS WAS SEPTEMBER 30, 1968. ON JANUARY 25, 1969, GOLDSTEIN AND "LOCAL 486" SIGNED FURTHER COLLECTIVE AGREEMENTS COVERING THE COMPANY'S FULL-TIME AND PART-TIME EMPLOYEES AT ITS ELGIN STREET STORE. THE DURATION CLAUSE OF THE AGREEMENTS PROVIDED THAT THEY WERE TO BE EFFECTIVE FROM OCTOBER 1, 1968 TO SEPTEMBER 30, 1970 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE. TIMELY NOTICE WAS GIVEN BY "LOCAL 486" TO GOLDSTEIN UNDER SECTION 40 OF THE ACT OF ITS DESIRE TO BARGAIN FOR THE RENEWAL OF THE AGREEMENTS. AS HAS ALREADY BEEN STATED ON SEPTEMBER 30, 1970, "LOCAL 486" APPLIED FOR CONCILIATION SERVICES AND ON OCTOBER 14, 1970 THE MINISTER APPOINTED A CONCILIATION OFFICER.

6. UNTIL EARLY IN 1968 LOCAL 486 HAD JURISDICTION OVER EASTERN ONTARIO AS FAR WEST AS KINGSTON. THIS, OF COURSE, INCLUDED THE CITY OF OTTAWA, THE AREA WITH WHICH WE ARE HERE CONCERNED. TWO OTHER

LOCALS OF THE ASSOCIATION HAD JURISDICTION IN THE PROVINCE OF QUEBEC. MORE PARTICULARLY LOCAL 486R REPRESENTED RETAIL STORE EMPLOYEES OF STEINBERG'S LIMITED AND MIRACLE MART LIMITED IN MONTREAL. LOCAL 486W REPRESENTED WAREHOUSE EMPLOYEES OF THE SAME TWO COMPANIES ALSO LOCATED IN MONTREAL. IN FEBRUARY OF 1968 LOCAL 486R AND LOCAL 486W SURRENDERED THEIR CHARTERS TO THE ASSOCIATION AND MERGED WITH LOCAL 486. THE EXPANDED JURISDICTION OF LOCAL 486 COVERED EASTERN ONTARIO AND THE PROVINCE OF QUEBEC. THE ELECTED OFFICERS OF LOCAL 486, PRIOR TO THE MERGER, CONTINUED ON AS OFFICERS OF THE ENLARGED LOCAL. IN MARCH OF 1968 LOCAL 486 REQUESTED THAT THE ASSOCIATION ISSUE A NEW CHARTER COVERING THE JURISDICTION FORMERLY HELD BY THE ABOVE THREE LOCALS. THE ASSOCIATION ACQUIESCED IN THIS REQUEST. ACCORDINGLY, IN MARCH OF 1968 LOCAL 486 SURRENDERED ITS CHARTER AND THE ASSOCIATION ISSUED A NEW CHARTER IN THE NAME OF THE COMMERCIAL EMPLOYEES UNION LOCAL 500 (HEREINAFTER REFERRED TO AS LOCAL 500). ON APRIL 1, 1968 LOCAL 500 ASSUMED THE JURISDICTION FORMERLY HELD BY LOCAL 486 FOR EASTERN ONTARIO AND THE PROVINCE OF QUEBEC. ACCORDING TO THE EVIDENCE THERE WAS NO NEW ELECTION OF OFFICERS WHEN LOCAL 500 CAME INTO EXISTENCE. RATHER, THE OFFICERS OF THE PREDECESSOR LOCAL 486 ASSUMED THE SAME OFFICES IN LOCAL 500.

7. ON JULY 19, 1968 THE ASSOCIATION PLACED LOCAL 500 IN TRUSTEESHIP AND DAVID A. WADE WAS NAMED AS TRUSTEE. EFFECTIVE OCTOBER 21, 1968 THE ASSOCIATION NAMED JACK L. LOVEALL TO REPLACE WADE AS TRUSTEE. LOVEALL SENT A MEMORANDUM DATED OCTOBER 23, 1968 "TO ALL EMPLOYERS UNDER CONTRACT WITH LOCAL 500 FORMERLY KNOWN AS EITHER LOCAL 486, 486R OR 486W" ADVISING THE SAID EMPLOYEES, INCLUDING JACK GOLDSTEIN, THE PRESENT OF GOLDSTEIN FOODMART LTD., OF THE CHANGE OF TRUSTEE. LOVEALL IN HIS MEMORANDUM ALSO ADVISED THE EMPLOYEES THAT HE HAD DESIGNATED THOMAS L. REES, AN INTERNATIONAL REPRESENTATIVE OF THE ASSOCIATION, TO SERVE IN THE CAPACITY OF DEPUTY TRUSTEE.

8. THE AGREEMENT BETWEEN LOCAL 486 AND GOLDSTEIN DATED JANUARY 25, 1969, WHICH WAS TO REMAIN IN EFFECT FROM OCTOBER 1, 1968 TO SEPTEMBER 30, 1970, WAS EXECUTED BY THOMAS REES ON BEHALF OF THE UNION AND BY JACK GOLDSTEIN ON BEHALF OF THE COMPANY. AT THE TIME THE AGREEMENT WAS SIGNED BOTH REES AND GOLDSTEIN WERE AWARE THAT LOCAL 486 HAD SURRENDERED ITS CHARTER AND THAT LOCAL 500 HAD ACQUIRED THE JURISDICTION FORMERLY HELD BY LOCAL 486. REES TESTIFIED THAT HE SIGNED THE AGREEMENT IN THE NAME OF LOCAL 486 ON THE INSTRUCTIONS OF WADE AND LOVEALL. (WADE WAS PRESENT AT THE BOARD HEARING BUT HE WAS NOT CALLED UPON TO TESTIFY.) THE EVIDENCE IS THAT THE FORMER MEMBERS OF LOCAL 486 BECAME MEMBERS OF LOCAL 500 WHEN IT WAS CHARTERED AND THAT AFTER APRIL 1, 1968, WHEN LOCAL 500 TOOK OVER THE JURISDICTION OF LOCAL 486, ALL NEW MEMBERS JOINED LOCAL 500. ALSO, AFTER LOCAL 500 CAME INTO EXISTENCE, THE UNION DUES DEDUCTED BY GOLDSTEIN FOR ITS EMPLOYEES WERE DEPOSITED IN A BANK ACCOUNT IN THE NAME OF LOCAL 500.

9. FOR PURPOSES OF KEEPING EVENTS IN CHRONOLOGICAL ORDER, WE WOULD MENTION HERE THAT REES TERMINATED HIS EMPLOYMENT WITH THE ASSOCIATION ON SEPTEMBER 10, 1970. HE SUBSEQUENTLY BECAME PRESIDENT OF CMEU. BARRY BAILY WAS TRANSFERRED BY THE ASSOCIATION FROM ALBERTA TO SERVICE THE EASTERN ONTARIO AREA IN THE FALL OF 1970. BAILY WAS DESIGNATED AS A DEPUTY TRUSTEE OF LOCAL 500 IN NOVEMBER OF 1970.

10. IN RESPONSE TO A REQUEST MADE BY MEMBERS OF LOCAL 500 IN EASTERN ONTARIO, THE ASSOCIATION CHARTERED A LOCAL IN NOVEMBER OF 1970 WHICH IT CALLED LOCAL 486 WITH JURISDICTION OVER EASTERN ONTARIO. LOCAL 500 RELINQUISHED ITS JURISDICTION OVER THIS AREA. A MEETING OF THE NEWLY CHARTERED LOCAL 486 WAS HELD IN OTTAWA ON DECEMBER 1, 1970 WHICH WAS ATTENDED BY APPROXIMATELY 50 MEMBERS FALLING WITHIN THE GEOGRAPHIC JURISDICTION OF THE NEW LOCAL. BY RESOLUTION THE CHARTERED FOR THE NEW LOCAL 486 WAS ADOPTED AND PRO TEM OFFICERS WERE NAMED. IMMEDIATELY AFTER THE RESOLUTION WAS ADOPTED, RICHARD LEWIS, AN INTERNATIONAL VICE-PRESIDENT OF THE ASSOCIATION WHO WAS IN ATTENDANCE AT THE MEETING, READ TO THOSE PRESENT A LETTER FROM THE PRESIDENT OF THE ASSOCIATION DATED NOVEMBER 25, 1970 PLACING THE NEW LOCAL 486 UNDER TRUSTEESHIP EFFECTIVE IMMEDIATELY AND NAMING LEWIS AS TRUSTEE. THE TRUSTEESHIP REMAINED IN EFFECT UNTIL JULY 1, 1971 AND THE FIRST ELECTION OF OFFICERS FOR THE NEW LOCAL 486 WAS HELD IN JULY AFTER THE TRUSTEESHIP WAS TERMINATED.

11. IN THE ABSENCE OF ANY EVIDENCE TO THE CONTRARY, WE ACCEPT LOCAL 486, LOCAL 486R AND LOCAL 486W AS BEING BONA FIDE CHARTERED LOCALS OF THE ASSOCIATION. FURTHER, BASED ON THE EVIDENCE BEFORE US, WE ARE SATISFIED THAT ON APRIL 1, 1968 LOCAL 500 ACQUIRED THE JURISDICTION FORMERLY HELD BY LOCAL 486. MOREOVER, WHEN LOCAL 486 SURRENDERED ITS CHARTER IN MARCH OF 1968 AND RELINQUISHED ITS JURISDICTION TO THE NEWLY CHARTERED LOCAL 500, LOCAL 486 WENT OUT OF EXISTENCE. ACCORDINGLY, WHEN REES AND JACK GOLDSTEIN EXECUTED THE JANUARY 25, 1969 AGREEMENTS SOME TEN MONTHS LATER, NAMING GOLDSTEIN AND LOCAL 486 AS PARTIES, LOCAL 486 WAS A NON-EXISTENT ENTITY.

12. IT WAS ARGUED THAT SINCE THE SIGNATORIES TO THE JANUARY 25, 1969 AGREEMENTS INTENTIONALLY NAMED LOCAL 486 AS A PARTY TO THE AGREEMENT IN THE KNOWLEDGE THAT THE BARGAINING RIGHTS FOR THE EMPLOYEES COVERED BY THE AGREEMENTS WERE ACTUALLY HELD BY LOCAL 500, BY REASON OF A TRANSFER OF JURISDICTION FROM LOCAL 486, THAT THE BOARD SHOULD TREAT THE PARTY TO THE AGREEMENTS DESCRIBED AS LOCAL 486 AS ACTUALLY BEING LOCAL 500.

13. WE CAN SEE NO REASON WHY THE BOARD SHOULD TREAT THE "LOCAL 486" NAMED AS A PARTY TO THE JANUARY 25, 1969 AGREEMENTS AS BEING LOCAL 500 SIMPLY BY VIRTUE OF THE FACT THAT THE SIGNATORIES TO THE AGREEMENTS INTENTIONALLY DESCRIBED "LOCAL 486" AS A PARTY ALTHOUGH THEY WERE COGNIZANT OF THE FACT IT WAS LOCAL 500 WHICH WAS THE BARGAINING AGENT FOR THE

EMPLOYEES CONCERNED. FURTHER, NEITHER THE MOTIVATION OF THE SIGNATORIES IN SO NAMING "LOCAL 486" AS A PARTY NOR THE FACT THAT REES IS NOW THE PRESIDENT OF THE CMEU, WHICH IS NOW CHALLENGING THE AGREEMENT, ARE RELEVANT CONSIDERATIONS. FINALLY, NOTWITHSTANDING THAT THE LOCAL CHARTERED BY THE ASSOCIATION IN NOVEMBER OF 1970 WAS GIVEN THE SAME NUMBER AND JURISDICTION BY THE ASSOCIATION AS THE LOCAL WHICH SURRENDERED ITS CHARTER TO THE ASSOCIATION AND WENT OUT OF EXISTENCE AT THE END OF MARCH IN 1968, THERE IS NO QUESTION THAT THE LOCAL 486 CHARTERED IN NOVEMBER OF 1970 IS AN ENTIRELY DIFFERENT ENTITY FROM THE FORMER LOCAL 486. WE WOULD MENTION ALSO THAT WHETHER OR NOT THE NEW LOCAL 486 IS IN FACT A "PAPER" LOCAL HAS NO BEARING ON THE ISSUES UPON WHICH THE BOARD IS CALLED UPON TO MAKE A DETERMINATION.

14. HAVING REGARD TO ALL OF THE FOREGOING, OUR ANSWER TO THE SPECIFIC QUESTIONS POSED BY THE MINISTER IN HIS REFERENCE IS AS FOLLOWS:

1. NEITHER THE OLD NOR NEW LOCAL 486 CHARTERED BY THE ASSOCIATION WERE VALID SUBSISTING TRADE UNIONS AT THE TIME THE REQUEST WAS MADE TO THE MINISTER FOR THE APPOINTMENT OF A CONCILIATION OFFICER UNDER THE PROVISIONS OF SECTION 13 OF THE ACT.
2. HAVING REGARD TO THE ANSWER IN #1, NO VALID NOTICE WAS SERVED UNDER SECTION 40 OF THE ACT REQUIRING THE MINISTER TO APPOINT A CONCILIATION OFFICER UNDER THE PROVISIONS OF SECTION 13(1).
3. HAVING FOUND THAT THERE WAS NO COMPLIANCE WITH SECTION 13(1), NEITHER THE OLD NOR NEW LOCAL 486 CHARTERED BY THE ASSOCIATION WAS A "PARTY" WITHIN THE MEANING OF THE ACT SO AS TO PERMIT THE MINISTER TO APPOINT A CONCILIATION OFFICER UNDER THE PROVISIONS OF SECTION 13(2).

OUR ANSWER TO THE GENERAL TERMS OF THE REFERENCE IS THAT THE MINISTER DID NOT HAVE THE AUTHORITY TO MAKE THE APPOINTMENT OF A CONCILIATION OFFICER ON OCTOBER 14, 1970.

CASE LISTINGS AUGUST 1971

	PAGE
1. CERTIFICATION	
(A) BARGAINING AGENTS CERTIFIED	176
(B) APPLICATIONS DISMISSED	183
(C) APPLICATIONS WITHDRAWN	187
2. APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS	187
3. APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS	189
4. APPLICATIONS FOR CONSENT TO PROSECUTE	189
5. COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE)	193
6. APPLICATIONS UNDER SECTION 35(A)	195
7. APPLICATION FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT	195
8. APPLICATIONS UNDER SECTION 47A	196
9. JURISDICTIONAL DISPUTES	196
10. APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2)	197
11. REFERENCES TO BOARD PURSUANT TO SECTION 79A	197
12. APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION	197

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARDDURING AUGUST 1971BARGAINING AGENTS CERTIFIED DURING AUGUSTNo Vote Conducted

388-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE VILLAGE OF PICKERING (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE VILLAGE OF PICKERING, SAVE AND EXCEPT DEPUTY CLERK-TREASURER, PERSONS ABOVE THE RANK OF DEPUTY CLERK-TREASURER, CONFIDENTIAL SECRETARY TO THE CLERK-TREASURER AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (4 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

451-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1036 (APPLICANT) V. CANADA BONDWOOD LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BLIND RIVER SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (27 EMPLOYEES IN THE UNIT).

493-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. CADILLAC DEVELOPMENT CORPORATION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

(SEE DECISION [1971] OLRB REP. 536).

542-71-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICATION) V. CO-OP FOOD CENTRE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE, SAVE AND EXCEPT STORE MANAGER, ASSISTANT STORE MANAGER AND MEAT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT STORE MANAGER AND MEAT MANAGER, AND OFFICE STAFF." (23 EMPLOYEES IN THE UNIT).

562-71-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. BRACEBRIDGE WORKS, WIRE & CABLE DIVISION, ALCAN CANADA PRODUCTS, A DIVISION OF ALUMINUM COMPANY OF CANADA LTD. (RESPONDENT) V. ALCAN WIRE AND CABLE EMPLOYEES (BRACEBRIDGE) ASSOCIATION (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWN OF BRACEBRIDGE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, LABORATORY PERSONNEL, OPERATOR TRAINERS, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (44 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

580-71-R: GENERAL DRIVERS LOCAL 989 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. HOFFMAN CONCRETE PRODUCTS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF THE TOWNSHIP OF PETAWAWA, SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (60 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE DECISION [1971] OLRB REP. 540).

586-71-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. HOFFMAN CONCRETE PRODUCTS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING IN AND OUT OF THE ASHTON PLANT IN GOULBURN TOWNSHIP IN CARLETON COUNTY, SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (13 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

699-71-R: OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION C.L.C. (APPLICANT) V. TELE-DIRECT LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT TELEPHONE SALES SUPERVISOR AND DIRECTORY SALES MANAGER, PERSONS ABOVE THE RANKS OF TELEPHONE SALES SUPERVISOR AND DIRECTORY SALES MANAGER AND OFFICE STAFF." (18 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

722-71-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. BENNETT-PRATT LIMITED (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT). (HAVING REGARD TO ALL OF THE EVIDENCE BEFORE US AND TO THE REPRESENTATIONS OF THE PARTIES).

727-71-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. K-MART FOODS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT KINGSTON TOWNSHIP REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (52 EMPLOYEES IN THE UNIT).

734-71-R: CANADIAN BROTHERHOOD OF RAILWAY TRANSPORT AND GENERAL WORKERS (APPLICANT) V. PEEK MOVERS LTD. AND MAPLE LEAF CARTAGE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DISPATCHER AND OFFICE STAFF." (6 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

735-71-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, TEAMSTERS LOCAL UNION 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. GEORGE LANTHIER & FILS LIMITEE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT COMPANY AT ALEXANDRA, SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (50 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES).

736-71-R: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT) V. UNION CARBIDE CANADA LIMITED GAS PRODUCTS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND STUDENTS EMPLOYED ON A CO-OPERATIVE TRAINING BASIS." (22 EMPLOYEES IN THE UNIT).

739-71-R: LOCAL UNION 636 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO-CLC (APPLICANT) V. FEDERAL ALARMS LIMITED AND DOMINION FIRE AND BURGLARY ALARMS LTD. (RESPONDENTS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENTS AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND SUPERVISORS, THOSE ABOVE THE RANK OF FOREMAN AND SUPERVISOR, OFFICE AND SALES STAFF." (9 EMPLOYEES IN THE UNIT).

742-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. JOHN PYNDYK (MASONRY CONTRACTORS) LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE

AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

745-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. TIMMINS AMBULANCE SERVICE - OWNED AND OPERATED BY MR. YVON BOUCHER (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TIMMINS, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND OFFICE STAFF." (7 EMPLOYEES IN THE UNIT).

(SEE DECISION [1971] OLRB REP. 472).

750-71-R: SERVICE EMPLOYEES UNION, LOCAL 204 AFFILIATED WITH THE S.E. I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. CHELSEY PARK NURSING HOME LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN MISSISSAUGA, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANKS OF SUPERVISOR AND FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (71 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

751-71-R: OPTICAL & PLASTIC TECHNICIANS & ALLIED WORKERS UNION, LOCAL 67 OF U.H.C. & M.W.I.U. (APPLICANT) V. MONARCH OPTICAL MANUFACTURERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (25 EMPLOYEES IN THE UNIT).

752-71-R: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. VERSA-SERVICES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE HILLCREST CONVALESCENT HOSPITAL, TORONTO, SAVE AND EXCEPT MANAGER, SUPERVISOR, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (7 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

761-71-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. BARBER-ELLIS OF CANADA, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT ASSISTANT WAREHOUSE SUPERINTENDENT, PERSONS ABOVE THE RANK OF ASSISTANT WAREHOUSE SUPERINTENDENT, CLERICAL STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (24 EMPLOYEES IN THE UNIT).

777-71-R: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL CIO CLC (APPLICANT) V. THE FIRESTONE TIRE & RUBBER COMPANY OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, GUARDS AND EMPLOYEES COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, LOCAL 113 AND THE RESPONDENT." (14 EMPLOYEES IN THE UNIT). (FOR THE PURPOSE OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE BARGAINING UNIT INCLUDES ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE POWER PLANT). (FOR THE PURPOSE OF CLARITY THE BOARD FURTHER NOTED THE AGREEMENT OF THE PARTIES THAT THE TERM "OFFICE STAFF" INCLUDES THE FACTORY CLERICAL AND LABORATORY AND DEVELOPMENT EMPLOYEES REFERRED TO IN THE SAID SUBSISTING COLLECTIVE AGREEMENT).

780-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. CONACO DEVELOPMENT FORMING LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (14 EMPLOYEES IN THE UNIT).

792-71-R: TEAMSTERS LOCAL UNION 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. ANTHES EQUIPMENT LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF SALTFLEET, SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (7 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES).

818-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. ALBIN CONSTRUCTION OTTAWA LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF

THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

825-71-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. WEST YORK CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

829-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. BALL BROTHERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH, VICTORIA AND THE PROVISIONAL COUNTY OF HALIBURTON ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

834-71-R: PRINTING SPECIALTIES AND PAPER PRODUCTS UNION, LOCAL 466 (APPLICANT) V. DATA BUSINESS FORMS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWN OF MISSISSAUGA, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (65 EMPLOYEES IN THE UNIT).

(SEE DECISION [1971] OLRB REP. 544).

835-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. ART BUSSE CONSTRUCTION (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

838-71-R: HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION LOCAL 261 OTTAWA, ONTARIO AFFILIATED WITH AFL-CIO AND C.L.C. (APPLICANT) V. CITY HALL CAFETERIA MANAGEMENT COMMITTEE (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE CITY HALL CORPORATION OF OTTAWA CAFETERIA, SAVE AND EXCEPT CHEF MANAGER AND PERSONS ABOVE THE RANK OF CHEF MANAGER." (9 EMPLOYEES IN THE UNIT).

846-71-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 247 (APPLICANT) V. DODGE CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

857-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. ZOPPAS & FONTAINE CONST. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

APPLICATION CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

666-71-R: BOOT AND SHE WORKERS' UNION CLC-AFL-CIO (APPLICANT) V. PETERSON PURITAN CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT 8001 KEELE STREET, CONCORD, IN THE TOWN OF VAUGHAN, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, LABORATORY AND QUALITY CONTROL STAFF, OFFICE STAFF, SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (26 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	27
NUMBER OF PERSONS WHO CAST BALLOTS	22
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	19
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	3

APPLICATIONS CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

30-70-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. CASWELL HOTEL (SAULT) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE EMPLOYED IN ITS BEVERAGE ROOMS AND COCKTAIL LOUNGE SAVE AND EXCEPT BEVERAGE ROOM AND LOUNGE MANAGERS, PERSONS ABOVE THE RANKS OF BEVERAGE ROOM AND LOUNGE MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (13 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	11
NUMBER OF PERSONS WHO CAST BALLOTS	11
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	7
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	4

383-71-R: READY-MIX, BUILDING SUPPLY, HYDRO & CONSTRUCTION DRIVERS, WAREHOUSEMEN & HELPERS, TEAMSTERS LOCAL UNION No. 230 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. RON MASCIANGELO CONSTRUCTION (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING IN AND OUT OF SUDBURY SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	4
NUMBER OF PERSONS WHO CAST BALLOTS	3
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	1

APPLICATIONS FOR CERTIFICATION DISMISSED DURING AUGUST

NO VOTE CONDUCTED

329-71-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. PORT WELLER DRY LOCKS LIMITED (RESPONDENT) V. L.U. 303 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS). (6 EMPLOYEES).

(SEE DECISION [1971] OLRB REP. 531).

680-71-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. BAERT NORTHERN LIMITED (RESPONDENT). (6 EMPLOYEES).

704-71-R: CANADIAN MERCHANDISING EMPLOYEES' UNION (APPLICANT) V. JOFFRE LAPOINTE & SONS LIMITED (RESPONDENT) V. RETAIL CLERKS UNION, LOCAL 486 (INTERVENER). (7 EMPLOYEES).

705-71-R: CANADIAN MERCHANDISING EMPLOYEES' UNION (APPLICANT) V. JOFFRE

LAPORTE & SONS LIMITED (RESPONDENT) V. RETAIL CLERKS UNION, LOCAL 486 (INTERVENER). (4 EMPLOYEES).

788-71-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES TEAMSTERS LOCAL UNION 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. RELIGIOUS HOSPITALERS OF ST. JOSEPH OF THE HOTEL DIEU OF KINGSTON (RESPONDENT) V. LOCAL 729, INTERNATIONAL UNION OF OPERATING ENGINEERS (INTERVENER). (18 EMPLOYEES).

(SEE DECISION [1971] OLRB REP. 461).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

703-71-R: TEXTILE WORKERS UNION OF AMERICA, AFL-CIO-CLC (APPLICANT) V. ADVANCED EXTRUSIONS LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT PENETANGUISHENE, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (73 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		67
NUMBER OF PERSONS WHO CAST BALLOTS		50
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	10	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	39	

729-71-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL-CIO:CLC (APPLICANT) V. THE OSHAWA WHOLESALE LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE ONTARIO FOOD DIVISION OF THE RESPONDENT IN STRATFORD, SAVE AND EXCEPT ASSISTANT STORE MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT STORE MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (11 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		11
NUMBER OF PERSONS WHO CAST BALLOTS		10
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	0	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	10	

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

520-71-R: INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS (APPLICANT) V. CONTINENTAL CAN COMPANY OF CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT ITS PLANT No. 589 AT GUELPH, SAVE AND EXCEPT PLANT SUPERINTENDENT, PLANT CONTROLLER AND PRODUCTION CONTROL SUPERVISOR, PERSONS ABOVE THE RANK OF PLANT SUPERINTENDENT, PLANT CONTROLLER AND PRODUCTION CONTROL SUPERVISOR, DISTRICT SALES MANAGER, SALESMEN, FIELD REPRESENTATIVES, EMPLOYMENT SUPERVISOR, PLANT NURSE, AND EMPLOYEES COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS AFL-CIO-CLC AND ITS AFFILIATED LOCAL No. 202." (14 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	14
NUMBER OF PERSONS WHO CAST BALLOTS	14
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	6
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	8

524-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. VULCAN ASPHALT & SUPPLY COMPANY LIMITED (RESPONDENT) V. OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION # 172 (INTERVENER).

UNIT: "ALL EMPLOYEES IN THE EMPLOY OF THE RESPONDENT WORKING AT OR OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, OFFICE STAFF, WATCHMEN AND DRAFTING PERSONNEL AND EMPLOYEES WHEN WORKING AT THE RESPONDENT'S YARD." (17 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	17
NUMBER OF PERSONS WHO CAST BALLOTS	14
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	12

526-71-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. CLEARWATER CHRYSLER DODGE LIMITED (RESPONDENT).

UNIT: "ALL NEW AND USED MOTOR VEHICLE SALESMEN OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT SALES MANAGERS AND PERSONS ABOVE THE

RANK OF SALES MANAGER." (11 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		10
NUMBER OF PERSONS WHO CAST BALLOTS	9	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	4	
NUMBER OF BALLOTS MARKED IN FAVOUR OF THE AUTOMOBILE SALESMEN'S ASSOCIATION	4	

544-71-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. ZEHRE'S MARKETS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT FERGUS, SAVE AND EXCEPT STORE MANAGER PERSONS ABOVE THE RANK OF STORE MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (9 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		9
NUMBER OF PERSONS WHO CAST BALLOTS	9	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	9	

559-71-R: TEAMSTERS LOCAL UNION 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. ZEHRE'S MARKETS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS WAREHOUSES AT WATERLOO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (25 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		22
NUMBER OF PERSONS WHO CAST BALLOTS	22	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	18	

565-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. FINCH PAVING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTRUCTION LABOURERS ENGAGED ON BUILDING PROJECTS AND SHOP AND YARD EMPLOYEES." (11 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	10
NUMBER OF PERSONS WHO CAST BALLOTS	8
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	6

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING AUGUST

790-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. BALL BROS. LTD. (RESPONDENT). (2 EMPLOYEES).

802-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. ART BUSSE CONSTRUCTION (RESPONDENT). (4 EMPLOYEES).

809-71-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. HOLSCOT CONSTRUCTION LTD. (RESPONDENT). (6 EMPLOYEES).

882-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. C. A. PITTS ENGINEERING CONSTRUCTION LTD. (RESPONDENT). (7 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF DURING AUGUST

469-71-R: LUCIEN MIRON, ON BEHALF OF THE LABOURERS IN THE EMPLOY OF SINCLAIR SUPPLY Co. LTD. (CONSTRUCTION DIVISION), AND LUCIEN MIRON, PERSONALLY (APPLICANT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 527 (RESPONDENT) V. SINCLAIR SUPPLY Co. LTD. (CONSTRUCTION DIVISION) (INTERVENER). (13 EMPLOYEES). (DISMISSED).

470-71-R: ALBERT BURROUGHS, ON BEHALF OF THE CARPENTERS AND CARPENTERS APPRENTICES, IN THE EMPLOY OF SINCLAIR SUPPLY CO. LTD. (CONSTRUCTION DIVISION) AND ALBERT BURROUGHS PERSONNALLY (APPLICANT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (RESPONDENT) V. SINCLAIR SUPPLY CO. LTD.(CONSTRUCTION DIVISION) (INTERVENER). (11 EMPLOYEES). (GRANTED).

478-71-R: ART GAGNON, LES CUMMINGS AND ROBERT LAHTI (APPLICANTS) V. BAKERY AND CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 483 (RESPONDENT) V. MODEL DAIRY (SAULT) LIMITED (INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES OF MODEL DAIRY (SAULT) LIMITED AT ITS PLANT IN SAULT STE. MARIE, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, SALES SUPERVISORS, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (24 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	19
NUMBER OF PERSONS WHO CAST BALLOTS	18
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF RESPONDENT	4
NUMBER OF BALLOTS MARKED AGAINST	
RESPONDENT	14

479-71-R: KARL HULT, GABRIEL DOUVILLE, LES MCPHEE, MAURICE GREZEL (APPLICANTS) V. BAKERY AND CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 483 (RESPONDENT) V. SOO DAIRIES LIMITED (INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES OF SOO DAIRIES LIMITED AT ITS PLANT IN SAULT STE. MARIE, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, SALES SUPERVISORS, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (44 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	41
NUMBER OF PERSONS WHO CAST BALLOTS	40
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF RESPONDENT	13
NUMBER OF BALLOTS MARKED AGAINST	
RESPONDENT	27

527-71-R: CLIVE R. DYKER (APPLICANT) V. RETAIL CLERKS INTERNATIONAL ASSOCIATION LOCAL 206 (RESPONDENT). (6 EMPLOYEES). (DISMISSED).

(SEE DECISION [1971] OLRB REP. 474).

575-71-R: LAWRENCE C. BROWN AND OTHERS (APPLICANTS) V. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT) V. ELLIOTT MOTORS 70 LIMITED (INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES OF ELLIOTT MOTORS 70 LIMITED AT BELLEVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SERVICE SALESCLERKS, PARTS SALESCLERKS, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (34 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		34
NUMBER OF PERSONS WHO CAST BALLOTS	26	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF RESPONDENT	1	
NUMBER OF BALLOTS MARKED AGAINST		
RESPONDENT	25	

701-71-R: TONY BALONOWSKI (APPLICANT) V. UNITED STEEL WORKERS OF AMERICA (RESPONDENT) V. TRI-SURE PRODUCTS LIMITED (INTERVENER). (37 EMPLOYEES). (GRANTED).

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING

AUGUST

789-71-R: UNITED GLASS & CERAMIC WORKERS OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. CANADA VITRIFIED PRODUCTS LIMITED (RESPONDENT) V. LOCAL UNION 1567, CANADIAN LABOUR CONGRESS (PREDECESSOR TRADE UNION). (GRANTED).

795-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE ONTARIO COUNTY BOARD OF EDUCATION (RESPONDENT). (DISMISSED).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING AUGUST

173-70-U: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS' LOCAL UNION 1687 (APPLICANT) V. CANADIAN INTERNATIONAL COMSTOCK COMPANY LIMITED (RESPONDENT). (DISMISSED).

551-71-U: CANADIAN INTERNATIONAL COMSTOCK COMPANY LIMITED (APPLICANT) V. E. ABRAMS ET AL (RESPONDENTS). (DISMISSED).

610-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. R. MIETTINEN ET AL (RESPONDENTS). (DISMISSED).

611-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. C. PRESTON ET AL (RESPONDENTS). (DISMISSED).

612-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. C. JETTE ET AL (RESPONDENTS). (DISMISSED).

613-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. G. RHEAULT ET AL (RESPONDENTS). (DISMISSED).

614-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. A. BESSETTE ET AL (RESPONDENTS). (DISMISSED).

615-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. D. FENATO (RESPONDENT). (DISMISSED).

616-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. J. TRAPP ET AL (RESPONDENTS). (DISMISSED).

617-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. W. HARRISON (RESPONDENT). (DISMISSED).

618-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. M. FOLLETT ET AL (RESPONDENTS). (DISMISSED).

619-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. B. NISBET (RESPONDENT). (DISMISSED).

620-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. G. QUESNELLE (RESPONDENT). (DISMISSED).

621-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. WILLIAM MARCHILDON ET AL (RESPONDENTS). (DISMISSED).

622-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. O. PINET (RESPONDENT). (DISMISSED).

623-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. L. MENARD ET AL (RESPONDENTS). (DISMISSED).

624-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. O. HAMELIN (RESPONDENT). (DISMISSED).

625-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. M. BODICK (RESPONDENT). (DISMISSED).

626-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. A. BOLDUC (RESPONDENT). (DISMISSED).

627-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. G. CHIASSON (RESPONDENT). (DISMISSED).

628-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. MAX STEINBRUNNER ET AL (RESPONDENTS). (DISMISSED).

629-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. K. LEHTIMAKI ET AL (RESPONDENTS). (DISMISSED).

630-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. R. BRAZEAU ET AL (RESPONDENTS). (DISMISSED).

631-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. M. SWIEBODA ET AL (RESPONDENTS). (DISMISSED).

632-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. G. FISCHER (RESPONDENT). (DISMISSED).

633-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. F. LABRIE (RESPONDENT). (DISMISSED).

634-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. L. LAJEUNESSE (RESPONDENT). (DISMISSED).

635-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. R. BUSSIERE (RESPONDENT). (DISMISSED).

636-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. H. POTVIN (RESPONDENT). (DISMISSED).

637-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. N. BELISLE (RESPONDENT). (DISMISSED).

638-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. C. LANDRY (RESPONDENT). (DISMISSED).

639-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. R. DUBOIS (RESPONDENT). (DISMISSED).

640-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. W. MCKEN (RESPONDENT). (DISMISSED).

641-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. M. JETTE (RESPONDENT). (DISMISSED).

642-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. R. DUBOIS ET AL (RESPONDENTS). (DISMISSED).

643-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. D. BUREY (RESPONDENT). (DISMISSED).

644-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. C. JOLY ET AL (RESPONDENTS). (DISMISSED).

645-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. M. MARCHILDON (RESPONDENT). (DISMISSED).

646-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. M. BRACKEN (RESPONDENT). (DISMISSED).

647-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. M. DOUCET ET AL (RESPONDENTS). (DISMISSED).

648-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. P. ROY (RESPONDENT). (DISMISSED).

649-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. M. PITKANEN (RESPONDENT). (DISMISSED).

650-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. J. ROY ET AL (RESPONDENTS). (DISMISSED).

651-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. J. LABRIE (RESPONDENT). (DISMISSED).

652-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. C. TAMBEAU (RESPONDENT). (DISMISSED).

653-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. N. N. GOUDREAU ET AL (RESPONDENTS). (DISMISSED).

654-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. R. VAILLANCOURT (RESPONDENT). (DISMISSED).

655-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. W. LEDOUER (RESPONDENT). (DISMISSED).

656-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. D. WATERS (RESPONDENT). (DISMISSED).

657-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. R. LONG (RESPONDENT). (DISMISSED).

658-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. L. PERRON ET AL (RESPONDENTS). (DISMISSED).

711-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. J. CLARKE ET AL (RESPONDENTS). (DISMISSED).

713-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. G. PAULIN ET AL (RESPONDENTS). (DISMISSED).

714-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. ALBERT LANGEVIN ET AL (RESPONDENTS). (DISMISSED).

715-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. G. PAQUETTE ET AL (RESPONDENTS). (DISMISSED).

716-71-U: RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (APPLICANT) V. D. SMITH ET AL (RESPONDENTS). (DISMISSED).

765-71-U: CLOUTIER BROTHERS LTD. (APPLICANT) V. GEORGE LABONTE ET AL (RESPONDENTS). (GRANTED).

766-71-U: CLOUTIER BROTHERS LTD. (APPLICANT) V. RENE BRIXHE AND THE LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (RESPONDENTS). (GRANTED).

769-71-U: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, THE AMALGAMATED MEATCUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. ZEHR'S MARKETS LIMITED AND JOHN SWEENEY (RESPONDENT). (WITHDRAWN).

804-71-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1059 (APPLICANT) V. FRAMAT CONSTRUCTION LIMITED (RESPONDENT). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING

AUGUST

332-71-U: LOCAL 1590, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A.F.L.-C.I.O.-C.L.C. (COMPLAINANT) V. McDONALD APPLIANCE SERVICE LTD. (RESPONDENT). (DISMISSED).

(SEE DECISION [1971] OLRB REP. 465).

339-71-U: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (COMPLAINANT) V. SWISS CHALET B-Q A DIVISION OF HARVEY FOODS (RESPONDENT). (GRANTED).

(SEE DECISION [1971] OLRB REP. 462).

345-71-U: CANADIAN UNION OF CONSTRUCTION WORKERS (COMPLAINANT) V. SCHWENGER CONSTRUCTION LIMITED AND LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 527 (RESPONDENTS). (GRANTED).

(SEE DECISION [1971] OLRB REP. 481).

420-71-U: CANADIAN TEXTILE AND CHEMICAL UNION (COMPLAINANT) V. INTERNATIONAL CHEMICAL WORKERS UNION; AND THOMAS E. BOYLE, INTERNATIONAL PRESIDENT; THOMAS SLOAN, INT. VICE PRESIDENT; R. W. STEWART, ASSISTANT CANADIAN DIRECTOR (RESPONDENTS). (DISMISSED).

(SEE DECISION [1971] OLRB REP. 469).

449-71-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V. COM-MODORE HOMES (RESPONDENT).

- AND -

483-71-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V. COM-MODORE HOMES (RESPONDENT). (GRANTED).

(SEE DECISION [1971] OLRB REP. 468).

466-71-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (COMPLAINANT) V. DODGE CONSTRUCTION COMPANY LIMITED (RESPONDENT). (GRANTED).

(SEE DECISION [1971] OLRB REP. 496).

487-71-U: LOCAL UNION 115, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A.F.L.-C.I.O.-C.L.C. (COMPLAINANT) V. ELECTRONIC CONTROLS LIMITED (RESPONDENT). (WITHDRAWN).

530-71-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1036 (COMPLAINANT) V. CANADA BONDWOOD LTD., GEORGE DAoust AND BRIAN LAHEY (RESPONDENTS). (GRANTED).

574-71-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AG-RICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (COMPLAINANT) V. LELY LIMITED (RESPONDENT). (GRANTED).

(SEE DECISION [1971] OLRB REP. 485).

588-71-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. DODGE MANU-FACTURING (CANADA) LIMITED (RESPONDENT).

663-71-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1036 (COMPLAINANT) V. CANADA BONDWOOD LTD., GEORGE DAoust AND BRIAN LAHEY (RESPONDENTS). (DISMISSED).

723-71-U: MILK AND BREAD DRIVERS AND DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. TWIN PINE DAIRY LIMITED (RESPONDENT). (WITHDRAWN).

733-71-U: AGNES THOMPSON (COMPLAINANT) V. AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC Local No. P688 (RESPONDENT). (DISMISSED).

768-71-U: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, THE AMALGAMATED MEATCUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, A.F.L.-C.I.O.-C.L.C. (COMPLAINANT) V. ZEHR'S MARKETS LIMITED (RESPONDENT). (WITHDRAWN).

769-71-U: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, THE AMALGAMATED MEATCUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, A.F.L.-C.I.O.-C.L.C. (COMPLAINANT) V. ZEHR'S MARKETS LTD. AND JOHN SWEENEY (RESPONDENT). (WITHDRAWN).

770-71-U: TERENCE REDMOND (COMPLAINANT) V. FEDERAL ALARMS LIMITED (RESPONDENT). (WITHDRAWN).

APPLICATIONS UNDER SECTION 35(A) DISPOSED OF DURING AUGUST

131-70-M: RALPH TERPSTRA (APPLICANT) V. THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL UNION No. 1065 (RESPONDENT TRADE UNION) V. JOSEPH BRANT MEMORIAL HOSPITAL OF THE BURLINGTON-NELSON HOSPITAL (RESPONDENT EMPLOYER). (GRANTED).

(SEE DECISION [1971] OLRB REP. 505).

132-70-M: DIANE STROOP (APPLICANT) V. THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL UNION No. 1065 (RESPONDENT TRADE UNION) V. JOSEPH BRANT MEMORIAL HOSPITAL OF THE BURLINGTON-NELSON HOSPITAL (RESPONDENT EMPLOYER). (GRANTED).

(SEE DECISION [1971] OLRB REP. 515).

APPLICATION FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

446-71-M: CHRYSLER CANADA LTD. (EMPLOYER) V. THE CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 102 (TRADE UNION). (WITHDRAWN).

APPLICATIONS UNDER SECTION 47A DISPOSED OF DURING AUGUST

103-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF GEORGINA (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT IN ITS OFFICE, CLERICAL AND TECHNICAL OPERATIONS, SAVE AND EXCEPT CLERK-TREASURER, PERSONNEL MANAGER, PERSONS ABOVE THE RANK OF CLERK-TREASURER AND PERSONNEL MANAGER."

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		30
NUMBER OF PERSONS WHO CAST BALLOTS	29	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	17	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	11	
NUMBER OF BALLOTS SEGREGATED AND		
NOT COUNTED	1	

688-71-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. WOODWAY STRUCTURAL COMPONENTS (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (DISMISSED).

(SEE DECISION [1971] OLRB REP. 545).

785-71-R: INTERNATIONAL BROTHERHOOD OF BOOKBINDERS, LOCAL #28 (APPLICANT) V. MACKINNON & MONCUR LIMITED (RESPONDENT). (GRANTED).

JURISDICTIONAL DISPUTES

106-70-JD: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 607 (COMPLAINANT) V. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 628 AND CANADIAN INTERNATIONAL COMSTOCK COMPANY LIMITED (RESPONDENTS).

(SEE DECISION [1971] OLRB REP. 477).

659-71-JD: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (COMPLAINANT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 18 AND JOHN E. SMITH & SON LATH, PLASTER & ACOUSTICAL CONTRACTORS (1968) LIMITED (RESPONDENTS).

(SEE DECISION [1971] OLRB REP. 466).

APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURINGAUGUST

154-70-M: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1219 (APPLICANT) V. TOWN OF MARKHAM (RESPONDENT).

732-71-M: INTERNATIONAL UNION OF DISTRICT 50, ALLIED AND TECHNICAL WORKERS OF THE UNITED STATES AND CANADA (APPLICANT) V. CUSTOM GLASS LIMITED (RESPONDENT).

759-71-M: SCARBOROUGH REGIONAL SCHOOL OF NURSING (EMPLOYER) V. NURSES' ASSOCIATION SCARBOROUGH REGIONAL SCHOOL OF NURSING (UNION).

REFERENCES TO BOARD PURSUANT TO SECTION 79A

18909-70-M: GOLDSTEIN FOODMART LTD. (EMPLOYER) V. RETAIL CLERKS UNION, LOCAL 486 CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION (TRADE UNION) V. CANADIAN MERCHANDISING EMPLOYEES' UNION (INTERVENER).

(SEE DECISION [1971] OLRB REP. 549).

222-71-M: SOCIETY OF ONTARIO HYDRO PROFESSIONAL ENGINEERS AND ASSOCIATES (TRADE UNION) V. HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (EMPLOYER).

(SEE DECISION [1971] OLRB REP. 501).

706-71-M: ONTARIO-MINNESOTA PULP AND PAPER COMPANY LIMITED FORT FRANCES PAPER DIVISION (EMPLOYER) V. INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS FORT FRANCES LODGE No. 771 (TRADE UNION).

707-71-M: THE ONTARIO-MINNESOTA PULP AND PAPER COMPANY LIMITED KENORA DIVISION (EMPLOYER) V. INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, KENORA LODGE No. 490 (TRADE UNION).

808-71-M: ESSEX MECHANICAL CONTRACTORS LIMITED - FORMERLY DALLAIRE HEATING & REFRIGERATION SERVICE (EMPLOYER) V. SHEET METAL WORKERS' LOCAL 235 INTERNATIONAL UNION OF ESSEX COUNTY (TRADE UNION).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

563-71-R: CHRISTIAN TRADE UNIONS OF CANADA (LOCAL 6) (APPLICANT) V. G. S. WARK LIMITED (RESPONDENT). (REQUEST DENIED).

(SEE DECISION [1971] OLRB REP. 526).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - TERMINATION

584-71-R: MELDRUM R. GAREAU AND EARL H. DICKSON (APPLICANTS) V. THE REPRESENTATIVES' AND TECHNICAL STAFF UNION (RESPONDENT). (REQUEST DENIED).

(SEE DECISION [1971] OLRB REP. 538).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - PROSECUTION

531-71-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1036 (APPLICANT) V. CANADA BONDWOOD LTD., GEORGE DAoust AND BRIAN LAHEY (RESPONDENTS). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 79(2)

783-71-M: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. FORD MOTOR COMPANY OF CANADA, LIMITED (RESPONDENT). (REQUEST DENIED).

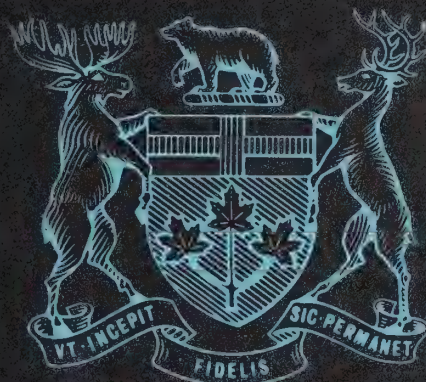
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SEPTEMBER

PAGES 554 - 628

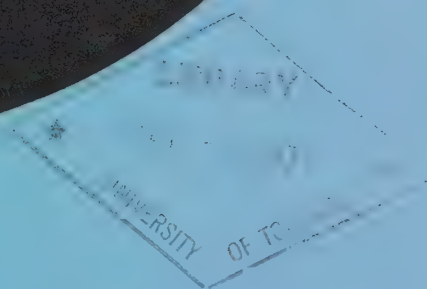
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54



ONTARIO

Monthly Report



ONTARIO LABOUR RELATIONS BOARD

ONTARIO LABOUR RELATIONS BOARD REPORTS

A MONTHLY SERIES OF DECISIONS FROM THE

ONTARIO LABOUR RELATIONS BOARD

CITED [1971] OLRB REP.

ACCREDITATION - EVIDENCE OF EMPLOYERS' ORGANIZATION -
 WHETHER DOCUMENTS APPOINTING EMPLOYER ORGANIZA-
 TION REQUIRE SEAL - APPROPRIATE UNIT OF EMPLOYERS -
 WHETHER UNIT SAME AS IN CERTIFICATION CASES - NA-
 TURE OF ACCREDITATION ORDER - PRACTICE OF BOARD
 IN DETERMINING EMPLOYEES IN THE UNIT OF EMPLOYERS -
 WHETHER MAJORITY OF EMPLOYERS IN UNIT OF EMPLOYERS
 ARE REPRESENTED BY APPLICANT - WHETHER EMPLOYER RE-
 PRESENTS A MAJORITY OF EMPLOYEES.

HAMILTON AND DISTRICT SHEET METAL CONTRACTORS INC.
 v. SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION
 LOCAL UNION 537 HAMILTON ONTARIO BRANCH v. LOCAL
 UNION 736 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE,
 STRUCTURAL AND ORNAMENTAL IRON WORKERS v. LOCAL UNION
 67 UNITED ASSOCIATION v. LOCAL UNION 105 INTERNATIONAL
 BROTHERHOOD OF ELECTRICAL WORKERS

562

ARBITRATION - WHETHER MINISTER WILL APPOINT NOMINEE TO BOARD
 OF ARBITRATION - WHETHER JURISDICTIONAL DISPUTE UNDER
 S. 66 - WHETHER CONCURRENT REMEDY PRECLUDES BOARD OF
 ARBITRATION FROM HEARING ISSUE.

CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY,
 ON BEHALF OF LOCAL UNIONS 27, 666, 681, 1133, 1747,
 1963, 3227 AND 3233 OF THE UNITED BROTHERHOOD OF CAR-
 PENTERS AND JOINERS OF AMERICA v. ELLIS-DON LIMITED

620

BARGAINING UNIT - BOARD POLICY TO CONFINE BARGAINING UNITS
 TO A SPECIFIC MUNICIPALITY.

MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND
 ALLIED EMPLOYEES, LOCAL UNION NO. 647, AFFILIATED WITH
 THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
 WAREHOUSEMEN AND HELPERS OF AMERICA v. GEORGE LANTHIER
 & FILS LIMITEE

614

BARGAINING UNITS - WHETHER ONE OR TWO UNITS APPROPRIATE -
 WISHES OF EMPLOYEES - WHETHER BOARD WILL ORDER A VOTE.

NURSES' ASSOCIATION MIDDLESEX-LONDON DISTRICT HEALTH
 UNIT v. MIDDLESEX-LONDON DISTRICT HEALTH UNIT v. CANA-
 DIAN UNION OF PUBLIC EMPLOYEES, LOCAL UNION 101 v.
 GROUP OF EMPLOYEES

560

CHARGES - ALLEGATIONS OF IMPROPER CONDUCT - LACK OF DETAILS -
WHETHER BOARD WILL INQUIRE FURTHER - WHETHER SECTIONS
OF ACT NEED BE ALLEGED.

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA - LOCAL
527 v. MURRAY R. GRAY LIMITED v. GROUP OF EMPLOYEES..... 597

CHARGES - PRACTICE - LATE FILING - PRESIDENT OF UNION OUT OF
PROVINCE - SECRETARY-TREASURER FILING FORM 8 - NOTHING
TO PREVENT SECRETARY-TREASURER FROM FILING ALLEGATIONS -
NO EXPLANATION AS TO WHY ALLEGATIONS DID NOT COME TO
THE ATTENTION OF APPLICANT AT AN EARLIER DATE.

CANADIAN MERCHANDISING EMPLOYEES' UNION v. JOFFRE LA-
POINTE & SONS LIMITED v. RETAIL CLERKS UNION, LOCAL
486 626

CHARGES - WHETHER EXERCISE OF REASONABLE DILIGENCE TO MAKE
INQUIRIES - WHETHER INQUIRIES MADE - APPROPRIATE CON-
DUCT FOR EMPLOYER IN MAKING INQUIRIES.

RETAIL CLERKS INTERNATIONAL ASSOCIATION v. MACLEODS,
A DIVISION OF MACLEOD STEDMAN LIMITED v. GROUP OF EM-
PLOYEES 599

COLLECTIVE AGREEMENT - COMPANY AGREEING TO BE BOUND BY MAS-
TER AGREEMENT - DOCUMENT UNDATED AND UNION NOT SIGN-
ING - WHETHER UNION BOUND - WHETHER COLLECTIVE AGREE-
MENT - WHETHER A BAR TO CERTIFICATION.

CHATHAM CONSTRUCTION WORKERS ASSOCIATION LOCAL NO. 53,
AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF
CANADA v. R.T. CONSTRUCTION v. LOCAL UNION 494 UNITED
BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA 593

COLLECTIVE AGREEMENT - PARTIES SIGNING MEMORANDUM OF AGREE-
MENT SUBJECT TO RATIFICATION - EMPLOYER FAILING TO
NOTIFY UNION IN WRITING IT HAD RATIFIED SETTLEMENT -
WHETHER PARTIES REQUIRED TO RATIFY SETTLEMENT IN
WRITING.

MELDRUM R. GAREAU AND EARL H. DICKSON v. THE REPRE-
SENTATIVES' AND TECHNICAL STAFF UNION 596

- COLLECTIVE AGREEMENT - PRACTICE - EMPLOYEE MOVING PLANT - PARTIES NOT AMENDING COLLECTIVE AGREEMENT TO COVER NEW LOCATION - NO CLAIM FOR RECTIFICATION - WHETHER TRADE UNION PARTY TO COLLECTIVE AGREEMENT ENTITLED TO APPEAR ON BALLOT IN REPRESENTATION VOTE.
- INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS v. RALPH MILROD METAL PRODUCTS LIMITED v. RALPH MILROD METAL PRODUCTS EMPLOYEES' ASSOCIATION 624
- EMPLOYEE - MANAGERIAL AUTHORITY - WHETHER REAL INDEPENDENT DISCRETIONARY AUTHORITY.
- CANDIAN UNION OF PUBLIC EMPLOYEES v. THE CORPORATION OF THE TOWN OF AURORA 579
- EMPLOYEE - S. 79(2) - WHETHER PERSONS ARE EMPLOYED FOR PURPOSES OF THE ACT - WHETHER ISSUE IS THE SAME AS TO WHETHER EMPLOYEES ARE COVERED BY COLLECTIVE AGREEMENTS - WHETHER BOARD WILL STAY PROCEEDINGS.
- INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) v. FORD MOTOR COMPANY OF CANADA, LIMITED 623
- EMPLOYER - JURISDICTIONAL DISPUTE - S. 1(4) - WHETHER RESPONDENT'S ARE ONE EMPLOYER WITHIN THE MEANING OF SECTION 1(4) - WHETHER ONUS ON PARTY INVOKING SECTION 1(4) OF THE ACT TO SATISFY BOARD THAT OTHER PARTIES SHOULD BE TREATED AS ONE EMPLOYER.
- THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, LOCAL 48 v. HEXAGON CONTRACTING LIMITED INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES LOCAL 1891 554
- EVIDENCE - PRACTICE - PROCEDURE OF BOARD IN CONDUCTING NON-PAY INQUIRY - ONUS OF PROOF.
- INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) v. A. G. SIMPSON COMPANY LIMITED v. SIMPSON PLANT COUNCIL 615
- EVIDENCE - TERMINATION - WHETHER REVOCATION DOCUMENTS SUBMITTED WILL BE CONSIDERED IN REDUCING SIGNATURES IN TERMINATION APPLICATION.

FRED WEPPLER, DONALD WRIGHT, BERNIE STEVENSON AND
LARRY HAMEL v. INTERNATIONAL UNION OF UNITED BRE-
WERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY
WORKERS OF AMERICA AFL, CIO-CLC v. SEVEN UP
(ONTARIO) LIMITED 575

JURISDICTIONAL DISPUTE - EMPLOYER - S. 1(4) - WHETHER
RESPONDENT'S ARE ONE EMPLOYER WITHIN THE MEANING
OF SECTION 1(4) - WHETHER ONUS ON PARTY INVOKING
SECTION 1(4) OF THE ACT TO SATISFY BOARD THAT
OTHER PARTIES SHOULD BE TREATED AS ONE EMPLOYER.

THE OPERATIVE PLASTERERS' AND CEMENT MASONS' IN-
TERNATIONAL ASSOCIATION, LOCAL 48 v. HEXAGON CON-
TRACTING LIMITED INTERNATIONAL BROTHERHOOD OF
PAINTERS AND ALLIED TRADES LOCAL 1891 554

LOCK-OUT - WHETHER ILLEGAL AS BEING PRIOR TO RELEASE OF
REPORT OF MEDIATOR - WHETHER MEDIATOR APPOINTED
PURSUANT TO ACT - WHETHER VOLUNTARY MEDIATOR.

CANADIAN UNION OF GENERAL EMPLOYEES v. TEKPAK AU-
TOMATED SYSTEMS LIMITED 577

MEMBERSHIP EVIDENCE - NON-PAY - EMPLOYEE COLLECTOR NOT
OBTAINING \$1.00 - WHETHER BOARD WILL PLACE RELIANCE
ON MEMBERSHIP DOCUMENTS IN WHICH EMPLOYEE ACTED AS
COLLECTOR - PROCEDURE OF BOARD IN CONDUCTING NON-
PAY INQUIRY - ONUS OF PROOF.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)
v. A. G. SIMPSON COMPANY LIMITED v. SIMPSON PLANT
COUNCIL 615

PRACTICE - APPLICATION FOR CERTIFICATION - AMALGAMATION
COUNTY AND CITY HEALTH UNITS - INTERVENER FORMERLY
REPRESENTING EMPLOYEES IN PREDECESSOR CITY UNIT -
WHETHER INTERVENER HAS STATUS IN CERTIFICATION PRO-
CEEDINGS - S. 47(A)10 - INTERMINGLING OF EMPLOYEES.

NURSES' ASSOCIATION MIDDLESEX-LONDON DISTRICT HEALTH
UNIT v. MIDDLESEX-LONDON DISTRICT UNIT v. CANADIAN
UNION OF PUBLIC EMPLOYEES, LOCAL UNION 101 v. GROUP
OF EMPLOYEES 560

PRACTICE - CHARGES - LATE FILING - PRESIDENT OF UNION OUT OF PROVINCE - SECRETARY-TREASURER FILING FORM 8 - NOTHING TO PREVENT SECRETARY-TREASURER FROM FILING ALLEGATIONS - NO EXPLANATION AS TO WHY ALLEGATIONS DID NOT COME TO THE ATTENTION OF APPLICANT AT AN EARLIER DATE.

CANADIAN MERCHANDISING EMPLOYEES' UNION v. JOFFRE LAPOINTE & SONS LIMITED v. RETAIL CLERKS UNION, LOCAL 486 626

PRACTICE - DESCRIPTION OF BARGAINING UNIT AT HEARING DEVIATING FROM DESCRIPTION OF BARGAINING UNIT APPLIED FOR AND POSTED - WHETHER BOARD WILL REPOST AND CONDUCT ANOTHER HEARING.

WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA v. SUNNYBROOK FOOD MARKET (KEELE) LIMITED v. LOCAL 206 NATIONAL COUNCIL OF CANADIAN LABOUR 606

PRACTICE - COLLECTIVE AGREEMENT - EMPLOYEE MOVING PLANT - PARTIES NOT AMENDING COLLECTIVE AGREEMENT TO COVER NEW LOCATION - NO CLAIM FOR RECTIFICATION - WHETHER TRADE UNION PARTY TO COLLECTIVE AGREEMENT ENTITLED TO APPEAR ON BALLOT IN REPRESENTATION VOTE.

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS v. RALPH MILROD METAL PRODUCTS LIMITED v. RALPH MILROD METAL PRODUCTS EMPLOYEES' ASSOCIATION 624

PRACTICE - EVIDENCE - PROCEDURE OF BOARD IN CONDUCTING NON-PAY INQUIRY - ONUS OF PROOF.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) v. A.G. SIMPSON COMPANY LIMITED v. SIMPSON PLANT COUNCIL 615

PRACTICE - MEMBERSHIP EVIDENCE - TRANSFER OF MEMBERSHIP CARDS FROM PREVIOUS APPLICATION - FAILURE TO FILE A COPY OF DECLARATION FORM 8 - WHETHER EVIDENCE OF MEMBERSHIP MEETS BOARD'S REQUIREMENTS.

CANADIAN MERCHANDISING EMPLOYEES' UNION v. JOFFRE LAPOINTE & SONS LIMITED v. RETAIL CLERKS UNION, LOCAL 486 626

VI

PRACTICE - REQUEST TO TRANSFER MEMBERSHIP CARDS - WHETHER
FORMS TRANSFERRED - WHETHER FAILURE TO FILE FORM 8 -
WHETHER BOARD WILL IMPOSE A BAR.

CANADIAN MERCHANDISING EMPLOYEES' UNION v. JOFFRE LA-
POINTE & SONS LIMITED v. RETAIL CLERKS UNION, LOCAL
486 621

RECONSIDERATION - WOODWAY STRUCTURAL COMPONENTS - MATTER
LISTED FOR HEARING.

INTERNATIONAL WOODWORKERS OF AMERICA v. WOODWAY
STRUCTURAL COMPONENTS v. GROUP OF EMPLOYEES 628

SECTION 65 (S. 79) - WHETHER EMPLOYEE DISCHARGED FOR
UNION ACTIVITY - KNOWLEDGE OF EMPLOYER - EMPLOYER
NOT CALLING EVIDENCE - ONUS OF PROOF.

THE LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995
OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS
OF AMERICA v. LECOURS LUMBER CO. 607

SECTION 65 - WHETHER VIOLATION OF S. 50(A) - OBLIGATION
ON EMPLOYER - WHETHER DISCHARGE UNJUST - WHETHER
CONTRARY TO THE ACT - WHETHER BOARD WILL ISSUE
CEASE AND DESIST ORDER.

TORONTO MAILERS' UNION, NO. 5 v. TORONTO STAR LIMITED 582

STRIKE - WHETHER UNLAWFUL - WHETHER EMPLOYEES WITHIN COL-
LECTIVE AGREEMENT - WHETHER COMPLIANCE WITH PROVISIONS
OF ACT.

FRANK TAGGART & SON LTD. v. SHEET METAL WORKERS'
INTERNATIONAL ASSOCIATION LOCAL UNION 537 573

TERMINATION - EMPLOYEES EXPRESSING DESIRE NOT TO HAVE TRADE
UNION REPRESENT THEM - TRADE UNION NOT ABANDONING BAR-
GAINING RIGHTS - TRADE UNION NOT GIVING NOTICE TO RE-
NEW COLLECTIVE AGREEMENT IN ACCORDANCE WITH WISHES OF
EMPLOYEES - WHETHER BOARD WILL EXERCISE DISCRETION IN
TERMINATING BARGAINING RIGHTS.

RUTH MARTIN v. NURSES' ASSOCIATION ST. MARY'S GENERAL
HOSPITAL KITCHENER, ONTARIO 556

VII

TERMINATION - EVIDENCE - WHETHER REVOCATION DOCUMENTS SUBMITTED WILL BE CONSIDERED IN REDUCING SIGNATURES IN TERMINATION APPLICATION.

FRED WEPPLER, DONALD WRIGHT, BERNIE STEVENSON AND
LARRY HAMEL v. INTERNATIONAL UNION OF UNITED BREWERY,
FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF
AMERICA AFL, CIO-CLC v. SEVEN UP (ONTARIO) LIMITED 575

719-71-JD: THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, LOCAL 48 (COMPLAINANT) V. HEXAGON CONTRACTING LIMITED INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES LOCAL 1891 (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: L. C. ARNOLD AND E. RUSSELL FOR THE COMPLAINANT; W. G. PHELPS FOR THE RESPONDENT COMPANY AND NORMAN LATHING LIMITED; A. M. MINSKY, D. CAIRNS AND A. C. FRANCESCHI FOR THE RESPONDENT UNION.

DECISION OF THE BOARD: SEPTEMBER 3, 1971.

1. THIS IS A COMPLAINT MADE UNDER SECTION 81 (FORMERLY SECTION 66) OF THE LABOUR RELATIONS ACT. THE COMPLAINANT IS REQUESTING THAT THE BOARD ISSUE A DIRECTION WITH RESPECT TO AN ASSIGNMENT OF WORK THAT HAS BEEN MADE TO THE RESPONDENT TRADE UNION WHICH THE COMPLAINANT ALLEGES FALLS WITHIN ITS WORK JURISDICTION. MORE PARTICULARLY, THE WORK IN DISPUTE IS THE TAPING OF DRYWALL AND RELATED TASKS BEING DONE ON THE EITZ CHAIM SCHOOL PROJECT IN METROPOLITAN TORONTO.

2. THE COMPLAINANT IN ITS COMPLAINT NAMED BOTH NORMAN LATHING LIMITED AND HEXAGON CONTRACTING LIMITED AS RESPONDENTS. COUNSEL FOR THE COMPLAINANT SUBMITS THAT NORMAN LATHING LIMITED AND HEXAGON CONTRACTING LIMITED, IN ESSENCE, ARE A SINGLE BUSINESS CARRIED ON UNDER COMMON DIRECTION AND CONTROL. IN DEALING WITH THE COMPLAINANT, COUNSEL FOR THE COMPLAINANT REQUESTED THAT THE BOARD FIRST MAKE A DETERMINATION PURSUANT TO SECTION 1(4) OF THE ACT AS TO WHETHER NORMAN LATHING LIMITED AND HEXAGON CONTRACTING LIMITED SHOULD BE TREATED AS ONE EMPLOYER PRIOR TO ENTERTAINING THE COMPLAINT ON ITS MERITS. AFTER CONSIDERING THE REPRESENTATIONS OF COUNSEL FOR ALL PARTIES, THE BOARD RULED THAT IT WAS PREPARED TO ACCEDE TO THE REQUEST OF COUNSEL FOR THE COMPLAINANT.

3. COUNSEL FOR THE COMPLAINANT ADDUCED EVIDENCE ON THE ABOVE PRELIMINARY ISSUE. NO EVIDENCE WAS CALLED BY THE RESPONDENTS. THE BOARD THEN ENTERTAINED THE SUBMISSIONS OF THE PARTIES AS TO WHETHER THE BOARD, IN THE EXERCISE OF ITS DISCRETION UNDER SECTION 1(4) OF THE ACT, SHOULD TREAT NORMAN LATHING LIMITED AND HEXAGON CONTRACTING LIMITED AS ONE EMPLOYER FOR PURPOSES OF THE COMPLAINT.

4. COUNSEL FOR THE COMPLAINANT ARGUED THAT THE EVIDENCE BEFORE THE BOARD ESTABLISHED A PRIMA FACIE CASE THAT NORMAN LATHING LIMITED AND HEXAGON CONTRACTING LIMITED ARE CARRYING ON A SINGLE BUSINESS UNDER COMMON DIRECTION AND CONTROL WITHIN THE MEANING OF SECTION 1(4)

OF THE ACT. COUNSEL FURTHER ASSERTED THAT HAVING ESTABLISHED A PRIMA FACIE CASE, THE ONUS SHIFTED TO THE RESPONDENTS TO ANSWER THE CASE MADE BY THE COMPLAINANT. THE RESPONDENTS HAVING CALLED NO EVIDENCE, COUNSEL FOR THE COMPLAINANT SUBMITTED THAT THE BOARD SHOULD TREAT NORMAN LATHING LIMITED AND HEXAGON CONTRACTING LIMITED AS ONE EMPLOYER.

5. COUNSEL FOR THE RESPONDENT TRADE UNION AND COUNSEL FOR NORMAN LATHING LIMITED AND HEXAGON CONTRACTING LIMITED SUBMITTED THAT BY THE PROVISIONS OF SECTION 1(4) THE ONUS IS UPON THE COMPLAINANT TO SATISFY THE BOARD THAT THE BUSINESSES OF NORMAN LATHING LIMITED AND HEXAGON CONTRACTING LIMITED ARE CARRIED ON UNDER SUCH A DEGREE OF COMMON CONTROL AND DIRECTION AS TO PERSUADE THE BOARD, IN THE EXERCISE OF ITS DISCRETION, TO TREAT NORMAN LATHING LIMITED AND HEXAGON CONTRACTING LIMITED AS ONE EMPLOYER. COUNSEL FOR THE RESPONDENTS ARGUED THAT THE EVIDENCE ADDUCED BY THE COMPLAINANT DOES NOT MEET ANY OF THE CRITERIA LAID DOWN IN THE WALTERS LITHOGRAPHING COMPANY LIMITED CASE (BOARD FILE NO. 320-71-R) SO AS TO CAUSE THE BOARD TO CONCLUDE THAT NORMAN LATHING LIMITED AND HEXAGON CONTRACTING LIMITED SHOULD BE TREATED AS ONE EMPLOYER. COUNSEL ACCORDINGLY URGED THE BOARD TO REJECT THE SUBMISSION OF COUNSEL FOR THE COMPLAINANT.

6. IN ITS DECISION IN THE WALTERS LITHOGRAPHING COMPANY LIMITED CASE, THE BOARD LISTED FIVE CRITERIA WHICH IT CONSIDERED TO BE RELEVANT IN MAKING A DETERMINATION AS TO WHETHER THE BUSINESSES OF MORE THAN ONE CORPORATION ARE CARRIED ON UNDER SUCH COMMON DIRECTION AND CONTROL THAT THE CORPORATIONS IN QUESTION SHOULD BE TREATED AS ONE EMPLOYER. THOSE CRITERIA ARE (1) COMMON OWNERSHIP OR FINANCIAL CONTROL, (2) COMMON MANAGEMENT, (3) INTERRELATIONSHIP OF OPERATIONS, (4) REPRESENTATION TO THE PUBLIC AS A SINGLE INTEGRATED ENTERPRISE, AND (5) CENTRALIZED CONTROL OF LABOUR RELATIONS. THE EVIDENCE ADDUCED BY THE COMPLAINANT IS NOT SUFFICIENT FOR THE BOARD TO MAKE ANY SORT OF EVALUATION UNDER THE ABOVE CRITERIA.

7. IN A RECENT DECISION IN THE WOODWAY STRUCTURAL COMPONENTS CASE (BOARD FILE NO. 688-71-R) THE BOARD DEALT AT SOME LENGTH WITH THE QUESTION OF THE ONUS THAT RESTS UPON AN APPLICANT UNDER SECTION 55 (FORMERLY SECTION 47A) OF THE ACT. THE ONUS ON A PARTY INVOKING SECTION 1(4) OF THE ACT IS NO DIFFERENT THAN THAT WHICH RESTS UPON AN APPLICANT ASSERTING THE SALE OF A BUSINESS UNDER SECTION 55. THE POSITION OF THE BOARD IN THE WOODWAY STRUCTURAL COMPONENTS CASE THEREFORE IS EQUALLY APPLICABLE TO THE COMPLAINANT IN THE INSTANT CASE. ACCORDINGLY, HAVING REGARD TO THAT DECISION AND THE EVIDENCE ADDUCED BY THE COMPLAINANT, THE BOARD FINDS THAT THE COMPLAINANT HAS NOT DISCHARGED THE ONUS UPON IT. IN THE RESULT, THE COMPLAINANT HAS FAILED TO SATISFY THE BOARD THAT NORMAN LATHING LIMITED AND HEXAGON CONTRACTING LIMITED SHOULD BE TREATED AS ONE EMPLOYER.

8. SECTION 81(1) OF THE ACT CONTEMPLATES ONLY THE EMPLOYER OF THE EMPLOYEES INVOLVED IN THE WORK ASSIGNMENT DISPUTE AS BEING A PARTY TO A COMPLAINT MADE UNDER THE SECTION. THERE IS NO DISPUTE THAT HEXAGON CONTRACTING LIMITED IS THE EMPLOYER CONCERNED. NORMAN LATHING LIMITED ACCORDINGLY IS HEREBY DELETED AS A NAMED RESPONDENT IN THIS COMPLAINT.

681-71-R: RUTH MARTIN (APPLICANT) V. NURSES' ASSOCIATION ST. MARY'S GENERAL HOSPITAL KITCHENER, ONTARIO (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND W. H. WIGHTMAN.

APPEARANCES AT THE HEARING: P. H. SIMS APPEARING FOR THE APPLICANT; AND MISS K. R. LEWIS APPEARING FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER O. HODGES:
SEPTEMBER 2, 1971.

1. THIS IS AN APPLICATION FOR A DECLARATION TERMINATING BARGAINING RIGHTS PURSUANT TO SECTION 45(1) OF THE LABOUR RELATIONS ACT.

2. BY DECISION OF THE BOARD DATED SEPTEMBER 18, 1969, THE RESPONDENT TRADE UNION WAS CERTIFIED AS BARGAINING AGENT, HAVING REGARD TO THE AGREEMENT OF THE PARTIES, FOR ALL LAY, REGISTERED AND GRADUATE NURSES EMPLOYED BY ST. MARY'S GENERAL HOSPITAL AT KITCHENER ENGAGED IN NURSING CARE AND TEACHING WITH CERTAIN EXCLUSIONS NOT RELEVANT TO THESE PROCEEDINGS. THE APPLICANT AND THE HOSPITAL THEREAFTER ENTERED INTO TWO SEPARATE COLLECTIVE AGREEMENTS, ONE COVERING THE NON-TEACHING NURSES DATED FEBRUARY 23, 1970, THE OTHER WITH THE TEACHING NURSES, DATED MARCH 13, 1970. IT IS ONLY THE LATTER TEACHING NURSES' AGREEMENT, WHICH CONCERNS US IN THIS APPLICATION.

3. ARTICLE 18.01 OF THIS AGREEMENT PROVIDES AS FOLLOWS:

"18.01 THIS AGREEMENT SHALL REMAIN IN FORCE FROM THE THIRD DAY OF JANUARY 1970, UNTIL THE SECOND DAY OF JANUARY 1971 AND SHALL BE AUTOMATICALLY RENEWED FROM YEAR TO YEAR THEREAFTER UNLESS EITHER PARTY NOTIFIES THE OTHER PARTY IN WRITING OF ITS DESIRE TO AMEND OR TERMINATE THIS COLLECTIVE AGREEMENT. SUCH NOTIFICATION WILL BE MADE NOT MORE THAN

SIXTY (60) DAYS AND NOT LESS THAN THIRTY (30) DAYS PRIOR TO THE TERMINATION OF THIS AGREEMENT."

4. IT IS NOT IN DISPUTE THAT NO WRITTEN NOTICE WAS GIVEN PURSUANT TO THE RENEWAL CLAUSE IN THE AGREEMENT, PURSUANT TO SECTION 40(2) OF THE ACT. ACCORDINGLY, WE FIND THAT THE SAID AGREEMENT AUTOMATICALLY RENEWED ITSELF IN ACCORDANCE WITH THE TERMS THEREOF.

5. IT IS THE APPLICANT'S POSITION THAT THE BOARD ISSUE A DECLARATION IN THIS MATTER ON BEHALF OF THE AFFECTED EMPLOYEES IN THIS MATTER WHO ARE IN EFFECT "TRAPPED" IN THE RENEWED AGREEMENT DUE TO THE INACTIVITY OF THE RESPONDENT AND THE HOSPITAL IN THIS REGARD. IN THIS CONNECTION, THERE WAS FILED WITH THE BOARD A LETTER FROM THE HOSPITAL DIRECTOR ADDRESSED TO MISS LEWIS THE CONTEXT OF WHICH READS AS FOLLOWS:

"CONFIRMING OUR CONVERSATION OF DECEMBER 30TH, IT IS UNDERSTOOD AND AGREED THAT AS THE TEACHERS AT THE SCHOOL OF NURSING, ST. MARY'S GENERAL HOSPITAL, HAVE EXPRESSED A DESIRE NOT TO HAVE THE NURSES' ASSOCIATION REPRESENT THEM FOR 1971 NEGOTIATIONS, AND SINCE NO NOTICE WAS SERVED ON THE HOSPITAL ON BEHALF OF THE TEACHERS FOR COLLECTIVE BARGAINING FOR 1971, THE HOSPITAL MAY THEN PROCEED TO DEAL WITH THE TEACHERS AND MAKE AN AGREEMENT AS MAY BE MUTUALLY AGREED TO BY AND FOR THE TEACHERS AT THE SCHOOL OF NURSING.

IT IS FURTHER UNDERSTOOD AND AGREED THAT THE RIGHTS OF THE NURSES' ASSOCIATION TO REPRESENT THE TEACHERS IN THE FUTURE IS PROTECTED AND THE CERTIFICATE ISSUED IN CONNECTION WITH FULL-TIME NURSES AND TEACHERS CONTINUES TO EXIST."

6. THE POSITION OF THE RESPONDENT IS THAT, IT IS NOT OPPOSING THE APPLICATION AND DESIRES TO REMAIN NEUTRAL IN THESE PROCEEDINGS. MISS LEWIS INDICATED TO THE BOARD THAT IN NOT GIVING NOTICE TO NEGOTIATE ON BEHALF OF THE TEACHING NURSES AT THE RELEVANT TIME, THE RESPONDENT WAS ONLY CARRYING OUT THE WISHES OF THE EMPLOYEES AFFECTED, IN THIS REGARD, BUT WHEN PRESSED BY THE BOARD AS TO WHETHER THE RESPONDENT WAS ABANDONING ITS BARGAINING RIGHTS, MISS LEWIS REPLIED IN THE NEGATIVE.

7. THE PRINCIPLES COVERING THE ISSUANCE OF A DECLARATION IN THESE CIRCUMSTANCES APPEAR TO BE SUCCINCTLY SET FORTH IN THE GRAHAM TRANSPORT LIMITED CASE, OLRB, M.R. MAY 1968, P. 184 AT PAGE 185, AS FOLLOWS:

"WHILE IT IS AT THE DISCRETION OF THE PARTIES WHETHER NOTICE IS GIVEN UNDER SECTION 40 OF THE ACT, FAILURE TO DO SO BY A TRADE UNION GIVES RISE TO THE RIGHT OF AN EMPLOYER OR EMPLOYEES TO BRING AN APPLICATION TO THE BOARD UNDER SECTION 45 OF THE ACT. SECTION 45(1) OF THE ACT HOWEVER, DOES NOT CONFER A "RIGHT" UPON THE APPLICANT OTHER THAN THE RIGHT TO MAKE AN APPLICATION. THE RELIEF SOUGHT BY THE APPLICANT IS AT THE DISCRETION OF THE BOARD AND BEFORE THE BOARD WILL EXERCISE ITS DISCRETION IN FAVOUR OF AN APPLICANT IT MUST BE SATISFIED THAT THE TRADE UNION HAS FAILED TO TAKE STEPS WITHIN A REASONABLE TIME TO FORWARD THE INTERESTS OF THOSE EMPLOYEES IT REPRESENTS. SEE THE MOYER SAND CASE, O.L.R.B., MONTHLY REPORT, MARCH 1966, P.913. THE BOARD IN A NUMBER OF CASES HAS CONSIDERED THE CIRCUMSTANCES IN WHICH IT WOULD EXERCISE ITS DISCRETION PROVIDED FOR IN SECTION 45, AND HAD STATED THAT THE DECISIONS RELATING TO SECTION 45(2) ARE RELEVANT IN THE CONSIDERATION OF CASES ARISING UNDER SECTION 45(1). SEE THE GRANT READY MIX LIMITED CASE, O.L.R.B., MONTHLY REPORT, DECEMBER 1967, AT PAGE 892. A STATEMENT AS TO THE PURPOSE OF SECTION 45 HAS BEEN SET OUT IN THE DOMINION STORES LIMITED CASE CCH CANADIAN LABOUR LAW REPORTER 1955-59 TRANSFER BINDER 16,047:

THE PURPOSE OF SECTION 43
[NOW SECTION 45] OF THE ACT
IS TO PROTECT THE EMPLOYEES
AND, IN A PROPER CASE, THE

EMPLOYER AGAINST A UNION WHICH STAKES OUT A CLAIM TO REPRESENT CERTAIN EMPLOYEES AND THEN TAKES NO STEPS WITHIN A REASONABLE TIME TO FORWARD THE INTERESTS OF THOSE EMPLOYEES. HOWEVER, THE SECTION IS TO BE USED AS A SHIELD, NOT AS A SWORD. SECTION 43 SHOULD NOT BE USED TO PENALIZE A UNION WHICH HAS FAILED TO GIVE NOTICE UNDER SECTION 10 [NOW SECTION 11] OF THE ACT, BUT RATHER TO AFFORD AN OPPORTUNITY FOR AN INTERESTED PARTY TO BRING THAT FACT TO THE ATTENTION OF THE BOARD SO THAT THE BOARD MAY CALL UPON THE UNION TO GIVE AN EXPLANATION FOR THE DELAY IN COMMENCING OR CONTINUING NEGOTIATIONS AS THE CASE MAY BE. IF NO SATISFACTORY EXPLANATION IS FORTHCOMING, THE BOARD WILL NO DOUBT IN MANY CASES TERMINATE THE BARGAINING RIGHTS OF THE UNION INSTANTANEOUSLY."

8. WE ARE SATISFIED THAT THE EMPLOYEES AFFECTED BY THIS APPLICATION, NAMELY THE TEACHING NURSES, WERE THE AUTHORS OF THEIR OWN MISFORTUNE IN PREVENTING THE RESPONDENT FROM NEGOTIATING ON THEIR BEHALF. HAVING REGARD TO THESE PARTICULAR CIRCUMSTANCES AND APPLYING THE PRINCIPLES ABOVE CITED, WE ARE SATISFIED WITH THE EXPLANATION PROVIDED BY THE RESPONDENT.

9. WE ARE THEREFORE OF THE OPINION THAT THE BOARD SHOULD NOT EXERCISE ITS DISCRETION TO ISSUE THE DECLARATION SOUGHT BY THE APPLICANT, AND THIS APPLICATION IS ACCORDINGLY DISMISSED.

DECISION OF BOARD MEMBER W.H. WIGHTMAN: SEPTEMBER 2, 1971.

1. I DISSENT FROM THE DECISION OF THE MAJORITY DISMISSING THE APPLICATION OF RUTH MARTIN TO TERMINATE THE BARGAINING RIGHTS OF THE RESPONDENT UNION PURSUANT TO SECTION 45(1) OF THE LABOUR RELATIONS ACT.

2. I WOULD HAVE THOUGHT THAT ONE OF THE PRIMARY PURPOSES OF THE LABOUR RELATIONS ACT IS TO SECURE AND PROTECT THE INTERESTS OF EMPLOYEES, AND THAT WHERE THE BOARD IS FACED WITH THE CHOICE OF EXERCISING ITS DISCRETIONARY POWERS ON BEHALF OF EITHER THE EMPLOYEES OR THE UNION IT WOULD BE MORE IN KEEPING WITH THE INTENT OF THE LEGISLATION, AND INDEED OUR ENTIRE CONCEPT OF OUR INDUSTRIAL RELATIONS SYSTEM, THAT SUCH DISCRETIONARY AUTHORITY SHOULD BE EXERCISED ON BEHALF OF THE EMPLOYEES.

3. ACCORDINGLY, I WOULD HAVE EXERCISED MY DISCRETION IN THIS MATTER AND ISSUED THE DECLARATION AS SOUGHT BY THE APPLICANT.

18974-70-R: NURSES' ASSOCIATION MIDDLESEX-LONDON DISTRICT HEALTH UNIT (APPLICANT) V. MIDDLESEX-LONDON DISTRICT HEALTH UNIT (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL UNION 101 (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: D. F. O. HERSEY, MISS K. R. LEWIS AND MISS S. MACKENZIE FOR THE APPLICANT; DR. DOUGLAS A. HUTCHISON FOR THE RESPONDENT; T. E. ARMSTRONG, D. COTT, S. SCARTERFIELD AND W. A. ACTON FOR THE INTERVENER; NO ONE APPEARING FOR THE OBJECTORS.

DECISION OF THE BOARD: SEPTEMBER 8, 1971.

1. BY DECISION OF THE BOARD DATED APRIL 8, 1971, THE BOARD FOUND THAT THE APPLICANT HAD ESTABLISHED ITS STATUS AS A TRADE UNION WITHIN THE MEANING OF THE LABOUR RELATIONS ACT, FOLLOWING THE AMALGAMATION OF THE FORMER MIDDLESEX COUNTY HEALTH UNIT (HEREINAFTER REFERRED TO AS THE PREDECESSOR COUNTY UNIT) AND THE FORMER CITY OF LONDON HEALTH UNIT (HEREINAFTER REFERRED TO AS THE PREDECESSOR CITY UNIT). THIS MERGER RESULTED IN THE FORMATION OF THE RESPONDENT EFFECTIVE JANUARY 1, 1971.

2. HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES AT THE SUBSEQUENT HEARING OF THIS MATTER ON AUGUST 4, 1971, AND TO THE PRINCIPLES AS CITED IN THE NORTH BAY BOARD OF EDUCATION CASE OLRB M.O.R. JULY 1969, PAGE 489, WE ARE SATISFIED THAT THE INTERVENER HAS STATUS IN THIS MATTER, WHICH EMANATES UNDER THE PROVISIONS OF SECTION 47A OF THE ACT, NOTWITHSTANDING THAT THE APPLICATION IS FRAMED AS ONE FOR CERTIFICATION AND IS NOT DIRECTLY BROUGHT UNDER THE SUCCESSOR PROVISIONS. IN THIS REGARD, THE BOARD FURTHER NOTES THE PROVISIONS OF SUBSECTION 10 OF SECTION 47A, WHEREIN THE EMPLOYEES OF THE PREDECESSOR COUNTY UNIT AND THE EMPLOYEES OF THE PREDECESSOR CITY UNIT ARE DEEMED TO HAVE BEEN INTERMINGLED IN THEIR NEW EMPLOYMENT RELATIONSHIP WITH THE RESPONDENT.

3. THE FOLLOWING FACTS DO NOT APPEAR TO BE IN DISPUTE. PRIOR TO THE FORMATION OF THE RESPONDENT AS DESCRIBED IN PARAGRAPH 1 HEREIN, THE REGISTERED AND GRADUATE NURSES WERE REPRESENTED BY THE "ORIGINAL" ASSOCIATION IN THEIR EMPLOYEE RELATIONSHIPS WITH THE PREDECESSOR COUNTY UNIT. AT THE SAME TIME, THE INTERVENER REPRESENTED ALL OF THE EMPLOYEES OF THE PREDECESSOR CITY UNIT, WHICH INCLUDED THE REGISTERED AND GRADUATE NURSES EMPLOYED THEREIN. OF THE 47 NURSES ON WHOSE BEHALF REPRESENTATION IS SOUGHT, 11 DERIVE FROM THE PREDECESSOR COUNTY UNIT AND THE REMAINING 36 ARE FROM THE PREDECESSOR CITY UNIT.

4. THE INTERVENER SUBMITS THAT THE APPLICANT IS IN EFFECT SEEKING TO CARVE OUT THE NURSES FROM A PRE-EXISTING UNIT. BY ANALOGY TO THE CASES DECIDED UNDER THE PROVISIONS OF SECTION 6(2) CONCERNING CRAFT UNIONS, IT IS ARGUED THAT AS THE APPLICANT HAS FAILED TO ADDUCE EVIDENCE OF INADEQUATE REPRESENTATION ITS APPLICATION MUST BE DENIED. GRANTING THAT A PREPONDERANCE OF NURSES WERE REPRESENTED BY THE INTERVENER AT THE RELEVANT TIME, THERE WERE, NEVERTHELESS, APPROXIMATELY 25% WHICH WERE REPRESENTED BY THE APPLICANT IN A SEPARATE UNIT WHICH HAS IN FACT BEEN IN EXISTENCE. THE CLAIM OF THE APPLICANT IS THE NATURAL EFFECT CAUSED BY A LEGISLATED MERGER OF THE COUNTY AND CITY HEALTH UNITS. THE APPLICANT WAS NOT RESPONSIBLE FOR THIS MERGER. IT IS REASONABLE THAT THE APPLICANT WOULD SEEK TO PROTECT ITS BARGAINING RIGHTS, WHICH IT HAD UP TO THE TIME OF THE SAID MERGER. WE ACCORDINGLY FIND THAT THESE CIRCUMSTANCES DO NOT CONSTITUTE A CARVING OUT SITUATION, AND THE PRINCIPLES ASSOCIATED THEREWITH ARE NOT APPLICABLE TO THE INSTANT CASE. FOR THE SAME REASON, WE DO NOT ACCEPT THE INTERVENER'S POSITION THAT THE ACTIONS OF THE APPLICANT IN THIS REGARD WOULD CONSTITUTE A RAID.

5. UNDER THE PROVISIONS OF SECTION 47A(5)(A) THE BOARD IS EMPOWERED TO DETERMINE WHETHER THE EMPLOYEES CONCERNED CONSTITUTE ONE OR MORE BARGAINING UNITS. IN THIS CONNECTION, THE APPLICANT SUBMITS THAT THE BARGAINING UNIT SHOULD BE RESTRICTED TO REGISTERED AND GRADUATE NURSES, COMPRISING IN TOTAL SOME 47 EMPLOYEES, WHILE ON THE OTHER HAND, THE INTERVENER SUGGESTED THAT THE UNIT SHOULD BE COMBINED AND EMBRACE ALL 92 EMPLOYEES OF THE RESPONDENT.

6. PURSUANT TO THE DECISION OF THE BOARD DATED APRIL 8, 1971, AN EXAMINER WAS APPOINTED TO ENQUIRE INTO THIS ISSUE AND THE BOARD ENTERTAINED THE REPRESENTATIONS OF THE PARTIES AT A HEARING HELD ON AUGUST 4, 1971, CONCERNING THE CONCLUSIONS THAT SHOULD BE DRAWN FROM THE RESULTANT REPORT OF THE EXAMINER DATED JUNE 16, 1971. ALTHOUGH THE REPLY OF THE RESPONDENT ALLEGED THAT THE UNIT AS SUGGESTED BY THE APPLICANT WAS APPROPRIATE, IT TOOK A POSITION OF NEUTRALITY ON THIS ISSUE AT THIS SUBSEQUENT HEARING.

7. HAVING REGARD TO ALL OF THE EVIDENCE IN THIS MATTER AND UPON

CONSIDERING THE REPRESENTATIONS OF THE PARTIES THERETO, THE BOARD DETERMINES THAT IN THE CIRCUMSTANCES OF THIS CASE, AND PURSUANT TO SECTION 47A (5)(A), THAT THERE ARE NO OVERRIDING FACTORS TO DECIDE THE QUESTION AS TO WHETHER ONE OR TWO BARGAINING UNITS ARE APPROPRIATE. AN ADDITIONAL FACTOR WHICH THE BOARD HAS TAKEN INTO ACCOUNT IN THIS REGARD IS THE WISHES OF THE EMPLOYEES CONCERNED.

8. THE BOARD FURTHER FINDS THAT ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT AT THE CITY OF LONDON AND IN THE COUNTY OF MIDDLESEX, SAVE AND EXCEPT SUPERVISORS AND THOSE ABOVE THE RANK OF SUPERVISOR, MAY CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

9. ACCORDINGLY, PURSUANT TO SECTION 47A(7), THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE FOLLOWING VOTING CONSTITUENCY;

ALL REGISTERED AND GRADUATE NURSES EMPLOYED
BY THE RESPONDENT AT THE CITY OF LONDON AND
IN THE COUNTY OF MIDDLESEX, SAVE AND EXCEPT
SUPERVISORS AND THOSE ABOVE THE RANK OF SUPERVISOR.

10. ALL EMPLOYEES OF THE RESPONDENT IN THE SAID VOTING CONSTITUENCY ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN SHALL BE ELIGIBLE TO VOTE.

11. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANT AND THE INTERVENER.

12. THE MATTER IS REFERRED TO THE REGISTRAR.

384-71-R: HAMILTON AND DISTRICT SHEET METAL CONTRACTORS INC. (APPLICANT) V. SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION LOCAL UNION 537 HAMILTON ONTARIO BRANCH (RESPONDENT) V. LOCAL UNION 736 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (INTERVENER #1) V. LOCAL UNION 67 UNITED ASSOCIATION (INTERVENER #2) V. LOCAL UNION 105 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (INTERVENER #3).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: BRIAN W. MORISON, Q.C., AND DR. GEORGE MOLLER FOR THE APPLICANT; RONALD S. TAYLOR AND EARL WEAVER FOR THE

RESPONDENT; NO ONE APPEARING FOR LOCAL UNION 736 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS; NO ONE APPEARING FOR LOCAL UNION 67 UNITED ASSOCIATION; A.G. MATTHEWS AND WILLIAM W. CORBETT FOR LOCAL UNION 105 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS; AND WILLIAM J. CROCKER FOR CANADIAN JOHNS-MANVILLE Co. LIMITED.

DECISION OF THE BOARD:

SEPTEMBER 9, 1971.

1. THIS IS AN APPLICATION FOR ACCREDITATION OF AN EMPLOYER'S ORGANIZATION UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT. AS PART OF ITS APPLICATION THE APPLICANT SUBMITTED A DECLARATION BY ITS PRESIDENT THAT IT IS AN EMPLOYERS' ORGANIZATION THAT REPRESENTS EMPLOYERS WHO OPERATE BUSINESSES IN THE CONSTRUCTION INDUSTRY. THE TRADE UNION RESPONDENT WAS A PARTY TO A COLLECTIVE AGREEMENT WITH THE HAMILTON AND DISTRICT SHEET METAL CONTRACTORS ASSOCIATION DATED JUNE 11TH, 1970. THAT AGREEMENT COVERS MORE THAN ONE EMPLOYER IN THE CONSTRUCTION INDUSTRY IN THE GEOGRAPHIC AREA AND THE SECTOR WHICH ARE THE SUBJECT OF THIS APPLICATION. THE BOARD THEREFORE FINDS THAT IT HAS JURISDICTION UNDER SECTION 113 OF THE ACT TO ENTERTAIN THIS APPLICATION.

2. THE APPLICANT IN THIS CASE IS A CORPORATION INCORPORATED UNDER THE NAME OF "HAMILTON AND DISTRICT SHEET METAL CONTRACTORS INC." BY LETTERS PATENT OF THE MINISTER OF FINANCIAL AND COMMERCIAL AFFAIRS FOR THE PROVINCE OF ONTARIO DATED APRIL 2ND, 1971. THE APPLICANT FILED WITH THE BOARD A TRUE COPY OF THESE LETTERS PATENT, THE APPLICANT ALSO FILED A TRUE COPY OF BY-LAWS 1 AND 2 OF THE CORPORATION BEING RESPECTIVELY THE GENERAL BY-LAW AND THE BY-LAW RELATING TO THE CONDUCT OF LABOUR RELATIONS OF THE CORPORATION. IT WAS REPRESENTED TO THE BOARD BY THE SOLICITOR FOR THE APPLICANT THAT THE CORPORATION IS THE SUCCESSOR TO THE HAMILTON AND DISTRICT SHEET METAL CONTRACTORS ASSOCIATION AND, INDEED, THE MEMBERSHIP PROVISION OF BY-LAW 1 OF THE CORPORATION MAKES MEMBERS OF THE ASSOCIATION MEMBERS OF THE APPLICANT CORPORATION. ON THE BASIS OF ALL THE EVIDENCE, THE BOARD IS SATISFIED THAT THE APPLICANT EMPLOYERS' ORGANIZATION IS AN EMPLOYERS' ORGANIZATION WITHIN THE MEANING OF SECTION 106(D) OF THE LABOUR RELATIONS ACT, R.S.O. 1970 c. 232, AND THAT IT IS A PROPERLY CONSTITUTED ORGANIZATION FOR THE PURPOSES OF SECTION 115(3) OF THE ACT.

3. THE RESPONDENT TRADE UNION HAS FILED A REPLY AND LISTS OF EMPLOYERS IN THE UNIT OF EMPLOYERS. IN ITS REPLY THE RESPONDENT MADE CERTAIN CHARGES CONCERNING THE REPRESENTATION BY THE APPLICANT OF EMPLOYERS AFFECTED BY THE APPLICANT AND FURTHER ALLEGING CERTAIN UNFAIR PRACTICES BY THE APPLICANT IN RELATION TO SOME EMPLOYERS IN THE PROPOSED UNIT OF EMPLOYERS. AT THE HEARING, THE RESPONDENT WITHDREW

THESE CHARGES. THE BOARD HAS ALSO RECEIVED THREE INTERVENTIONS IN THIS MATTER. INTERVENER #1 AND INTERVENER #2 APPEARED AT THE MEETING HELD BY THE FIRST EXAMINER APPOINTED TO DETERMINE THE LIST OF EMPLOYERS. AT THE HEARING BY THE BOARD ONLY INTERVENER #3 APPEARED.

4. IN SUPPORT OF ITS APPLICATION THE APPLICANT SUBMITTED THIRTY-SEVEN DOCUMENTS ENTITLED "APPLICATION FOR ACCREDITATION COLLECTIVE BARGAINING AUTHORIZATION POWER OF ATTORNEY". TWO OF THESE DOCUMENTS APPOINT THE "HAMILTON AND DISTRICT SHEET METAL CONTRACTORS ASSOCIATION" RATHER THAN THE APPLICANT AS AGENT AND REPRESENTATIVE. HOWEVER, SINCE THESE TWO DOCUMENTS DO NOT ADVERSELY AFFECT THE REPRESENTATIVE POSITION OF THE APPLICANT, THE BOARD FINDS IT UNNECESSARY TO MAKE ANY DECISION AS TO WHETHER THESE DOCUMENTS CONSTITUTE EVIDENCE OF REPRESENTATION FOR THE APPLICANT EMPLOYERS' ORGANIZATION. THE REMAINING THIRTY-FIVE DOCUMENTS WHICH HAVE BEEN SIGNED BY VARIOUS INDIVIDUAL EMPLOYERS APPOINT THE APPLICANT, HAMILTON AND DISTRICT SHEET METAL CONTRACTORS INC., AS AGENT AND REPRESENTATIVE FOR COLLECTIVE BARGAINING WITH THE SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL UNION 537, HAMILTON, ONTARIO, BRANCH. THE DOCUMENTS ALSO APPOINT THE CORPORATION AS THE AGENT AND REPRESENTATIVE OF THE EMPLOYER TO MAKE AN APPLICATION FOR ACCREDITATION. THE DOCUMENTS ARE SIGNED AND DATED BY VARIOUS INDIVIDUAL EMPLOYERS. THE APPLICANT ALSO SUBMITTED WITH ITS APPLICATION A LIST OF EMPLOYERS TOGETHER WITH THE ADDRESSES OF EACH EMPLOYER. THE BOARD FINDS THAT SUCH DOCUMENTS, TOGETHER WITH THE LIST OF NAMES AND ADDRESSES, ARE SUFFICIENT TO COMPLY WITH THE REQUIREMENTS AS TO THE FORM OF EVIDENCE OF REPRESENTATION ON AN APPLICATION FOR ACCREDITATION AS REQUIRED BY SECTION 96 OF THE BOARD'S RULES OF PROCEDURE. SOME OF THE DOCUMENTS FILED ON BEHALF OF THE INDIVIDUAL EMPLOYERS, ALTHOUGH IN THE NAME OF A CORPORATE ENTITY, WERE NOT SIGNED UNDER THE SEAL OF THE CORPORATION. AT THE HEARING THE RESPONDENT TRADE UNION DID NOT CONTEST THE ACCEPTABILITY OF SUCH DOCUMENTS AS EVIDENCE OF REPRESENTATION. ALTHOUGH WE HAVE DOUBTS THAT THE LACK OF SEAL ON SUCH A DOCUMENT HAS ANY EFFECT ON ITS ACCEPTABILITY AS EVIDENCE OF REPRESENTATION IN SUCH APPLICATIONS, IN LIGHT OF THE POSITION TAKEN BY THE RESPONDENT, WE PROPOSE TO ACCEPT THE EVIDENCE OF REPRESENTATION AS FILED WITHOUT MAKING ANY FINAL DECISION AS TO WHETHER IN OTHER CASES A SIGNATURE UNDER SEAL FOR A CORPORATION IS REQUIRED ON EVIDENCE OF REPRESENTATION IN AN APPLICATION FOR ACCREDITATION. THE APPLICANT HAS ALSO FILED A COMPLETED FORM 62, DECLARATION CONCERNING REPRESENTATION DOCUMENTS, CONSTRUCTION INDUSTRY.

5. AN EXAMINATION OF THE DOCUMENTS SUBMITTED AS EVIDENCE OF REPRESENTATION INDICATES THAT THE SCOPE OF THE AUTHORITY VESTED IN THE APPLICANT CORPORATION IS IN VERY GENERAL TERMS. IN ADDITION, THE BY-LAWS OF THE CORPORATION GIVE THE FOLLOWING AUTHORITY TO THE CORPORATION: "THAT MEMBERS OF THE CORPORATION BY VIRTUE OF BEING MEMBERS OF THE CORPORATION ARE DEEMED TO HAVE AUTHORIZED THE CORPORATION

TO ACT AS BARGAINING AGENT FOR THEM IN THE UNIT OF EMPLOYERS". THE EVIDENCE OF REPRESENTATION DOES NOT, HOWEVER, SIGNIFY THAT THE EMPLOYER SIGNATORY TO SUCH A DOCUMENT IS A MEMBER OF THE APPLICANT CORPORATION. IN ANY EVENT, THE BOARD IS SATISFIED THAT THE WRITTEN EVIDENCE OF REPRESENTATION VESTS APPROPRIATE AUTHORITY IN THE EMPLOYERS' ORGANIZATION TO ENABLE IT TO DISCHARGE THE RESPONSIBILITIES OF AN ACCREDITED BARGAINING AGENT. FURTHER, THE BOARD IS SATISFIED THAT MEMBERSHIP IN THE CORPORATION VESTS APPROPRIATE AUTHORITY IN THE ORGANIZATION TO ENABLE IT TO DISCHARGE THE RESPONSIBILITIES OF AN ACCREDITED BARGAINING AGENT ON BEHALF OF ITS MEMBERS.

6. THE APPLICANT HAS REQUESTED A UNIT OF EMPLOYERS AS FOLLOWS: "ALL EMPLOYERS ENGAGED IN THE SHEET METAL CONTRACTING DIVISION OF THE CONSTRUCTION INDUSTRY IN THE GEOGRAPHIC AREA AS SET OUT IN SCHEDULE "A" ATTACHED HERETO IN THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR OF THE CONSTRUCTION INDUSTRY WHERE THE BUSINESS OF SHEET METAL WORK IS CARRIED ON". SCHEDULE "A" REFERRED TO SETS OUT THE GEOGRAPHIC JURISDICTION OF THE HAMILTON, ONTARIO BRANCH OF THE SHEET METAL WORKERS INTERNATIONAL ASSOCIATION LOCAL UNION 537. THE RESPONDENT IN ITS REPLY AGREED WITH THIS UNIT OF EMPLOYERS. THIS AREA IS DIFFERENT FROM THE GEOGRAPHIC AREA REGULARLY GIVEN IN CONSTRUCTION INDUSTRY CERTIFICATION CASES IN THE HAMILTON AREA. BASED ON THE REPRESENTATIONS OF THE RESPONDENT, THE BOARD IS SATISFIED THAT THE AREA IN QUESTION DOES NOT OVERLAP WITH ADJACENT AREAS COVERED IN OTHER COLLECTIVE AGREEMENTS HELD BY OTHER BRANCHES OF THE RESPONDENT TRADE UNION AND A SISTER LOCAL OF THE RESPONDENT, NAMELY, LOCAL 30. SECTION 113 OF THE ACT CONTEMPLATES APPLICATIONS FOR ACCREDITATION BEING MADE WHERE A TRADE UNION HAS BARGAINING RIGHTS FOR A NUMBER OF EMPLOYERS. IN THE PRESENT CASE THESE BARGAINING RIGHTS ARISE PRIMARILY OUT OF A COLLECTIVE AGREEMENT BETWEEN THE HAMILTON AND DISTRICT SHEET METAL CONTRACTORS ASSOCIATION AND THE RESPONDENT. THE APPROPRIATE UNIT OF EMPLOYERS SHOULD THEREFORE BASICALLY RELATE TO THE BARGAINING RIGHTS WHICH ARE A CONDITION PRECEDENT TO THE MAKING OF AN APPLICATION FOR ACCREDITATION. ALTHOUGH THE AREA COVERED BY THE COLLECTIVE AGREEMENT IN QUESTION IS DIFFERENT FROM THE NORMAL HAMILTON AREA IN CERTIFICATION CASES, THE BOARD IS SATISFIED, IN THE CIRCUMSTANCES OF THIS CASE, THAT THE AREA SET OUT IN THE COLLECTIVE AGREEMENT REFERRED TO ABOVE IS THE APPROPRIATE GEOGRAPHIC AREA FOR ACCREDITATION.

7. THE AGREEMENT UPON WHICH THIS APPLICATION IS BASED DEALS WITH SHEET METAL WORKERS WHO ENGAGE IN BOTH ON-SITE WORK AND WORK IN VARIOUS SHEET METAL SHOPS. THE DEFINITION OF "CONSTRUCTION INDUSTRY" IN THE ACT REFERS TO ON-SITE WORK. THE RECENT AMENDMENTS TO THE ACT, HOWEVER, EXTEND THE DEFINITION OF "EMPLOYEE" IN THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT TO THOSE WHO ARE ENGAGED IN WHOLE OR IN PART IN OFF-SITE WORK BUT WHO ARE COMMONLY ASSOCIATED IN THEIR WORK OR BARGAINING WITH ON-SITE EMPLOYEES. IT WOULD APPEAR, THEREFORE,

THAT THE UNIT OF EMPLOYERS IN THIS APPLICATION CAN EXTEND TO THE WHOLE OF THE BARGAINING RIGHTS OF THE RESPONDENT SET OUT IN THE COLLECTIVE AGREEMENT AND STILL COME WITHIN THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT, AND THEREFORE BE THE SUBJECT MATTER OF AN APPLICATION FOR ACCREDITATION.

8. HAVING REGARD TO ALL THE ABOVE CONSIDERATIONS, THE BOARD FINDS THAT ALL EMPLOYERS OF EMPLOYEES FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS IN THE TOWN OF BURLINGTON, THE TOWNSHIP OF NASSAGAWEYA, THE TOWN OF MILTON, THAT PART OF THE TOWN OF OAKVILLE BEING SOUTH OF THE TOWN OF MILTON AND WEST OF PROVINCIAL HIGHWAY No. 25 TO A POINT WHERE THE OAKVILLE CREEK CROSSES HIGHWAY 25 AND THAT PART OF THE TOWN OF OAKVILLE LYING WEST OF THE OAKVILLE CREEK BETWEEN HIGHWAY 25 AND LAKE ONTARIO ALL IN THE COUNTY OF HALTON; THE CITY OF HAMILTON, THE COUNTY OF WENTWORTH, THE TOWNSHIPS OF SENECA, ONEIDA, WALPOLE, RAINHAM, NORTH CAYUGA, THAT PART OF THE TOWNSHIP OF SOUTH CAYUGA LYING WEST OF COUNTY ROAD 36 AND THAT PART OF THE TOWNSHIP OF CANBOROUGH LYING WEST OF COUNTY ROAD 15 ALL IN THE COUNTY OF HALDIMAND AND THAT PART OF THE TOWNSHIP OF WEST LINCOLN LYING BETWEEN THE EAST-ERLY BOUNDARY OF THE COUNTY OF WENTWORTH AND REGIONAL ROAD 16 AS IT EXTENDS FROM ITS INTERSECTION WITH REGIONAL ROAD 63 TO THE TOWN OF SMITHVILLE AND REGIONAL ROAD 14 AS IT EXTENDS FROM SMITHVILLE TO THE SHORES OF LAKE ONTARIO, IN THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR CONSTITUTES AN APPROPRIATE UNIT OF EMPLOYERS FOR COLLECTIVE BARGAINING. UNLIKE SOME OTHER CASES, THE MATTER OF TRADE UNION JURISDICTION WAS NOT RAISED BY THE APPLICANT OR THE RESPONDENT. HOWEVER, INTERVENER #3 DID RAISE THE MATTER AT THE HEARING AT WHICH TIME THE BOARD POINTED OUT THAT AN ACCREDITATION ORDER, LIKE A CERTIFICATE IN AN APPLICATION FOR CERTIFICATION, IS CONCERNED WITH BARGAINING RIGHTS AND NOT TRADE UNION JURISDICTION.

9. THE ACCREDITATION PROVISIONS OF THE LABOUR RELATIONS ACT REQUIRE THE BOARD TO MAKE SEVERAL VERY COMPLICATED DETERMINATIONS. THESE ARE SET OUT IN SUBSECTION 1 OF SECTION 115, WHICH READS AS FOLLOWS:

115.-(1) UPON AN APPLICATION FOR ACCREDITATION THE BOARD SHALL ASCERTAIN,

- (A) THE NUMBER OF EMPLOYERS IN THE UNIT OF EMPLOYERS ON THE DATE OF THE MAKING OF THE APPLICATION WHO HAVE WITHIN ONE YEAR PRIOR TO SUCH DATE HAD EMPLOYEES IN THEIR EMPLOY FOR WHOM THE TRADE UNION OR COUNCIL OF TRADE UNIONS HAS BARGAINING RIGHTS IN THE GEOGRAPHIC AREA AND SECTOR DETERMINED BY THE BOARD TO BE APPROPRIATE;

- (b) THE NUMBER OF EMPLOYERS IN CLAUSE A REPRESENTED BY THE EMPLOYERS' ORGANIZATION ON THE DATE OF THE MAKING OF THE APPLICATION; AND
- (c) THE NUMBER OF EMPLOYEES OF EMPLOYERS IN CLAUSE A ON THE PAYROLL OF EACH SUCH EMPLOYER FOR THE WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING THE DATE OF THE APPLICATION OR IF, IN THE OPINION OF THE BOARD, SUCH PAYROLL PERIOD IS UNSATISFACTORY FOR ANY ONE OR MORE OF THE EMPLOYERS IN CLAUSE A, SUCH OTHER WEEKLY PAYROLL PERIOD FOR ANY ONE OR MORE OF THE SAID EMPLOYERS AS THE BOARD CONSIDERS ADVISABLE.

THE BOARD'S RULES OF PROCEDURE REQUIRE THE RESPONDENT TRADE UNION, IN AN APPLICATION FOR ACCREDITATION, TO FILE LISTS OF EMPLOYERS, FOR WHOM IT HAS BARGAINING RIGHTS, ON SCHEDULES "E", "F" AND "G" ATTACHED TO FORM 61. SCHEDULE "E" CONTAINS THE NAMES OF THOSE EMPLOYERS, IN THE UNIT OF EMPLOYERS, WHO HAVE HAD EMPLOYEES AFFECTED BY THE APPLICATION IN THE YEAR IMMEDIATELY PRECEDING THE DATE OF THE MAKING OF THE APPLICATION, THAT IS, THESE ARE EMPLOYERS WITH WHOM THE UNION IS ENTITLED TO BARGAIN AND WHO HAVE WORKED IN THE AREA AND SECTOR INVOLVED DURING THE YEAR PRIOR TO THE APPLICATION. SCHEDULE "F" SETS OUT THOSE EMPLOYERS WHO ARE IN THE UNIT OF EMPLOYERS BUT WHO HAVE NOT HAD EMPLOYEES AFFECTED BY THE APPLICATION IN THE ONE-YEAR PERIOD. SCHEDULES "E" AND "F" ARE THUS MUTUALLY EXCLUSIVE LISTS. SCHEDULE "G" LISTS EMPLOYERS WHO ARE IN THE UNIT AND THUS ON EITHER SCHEDULE "E" OR SCHEDULE "F", BUT, FOR WHOM THE GEOGRAPHIC AREA IN THE AGREEMENT WITH THE UNION IS DIFFERENT FROM THAT SET OUT IN THE UNIT OF EMPLOYERS REQUESTED BY THE APPLICANT. THE PURPOSE OF SCHEDULE "G" IS TO GIVE THE BOARD AN INDICATION AS TO WHETHER OR NOT THE GEOGRAPHIC AREA APPROPRIATE FOR ACCREDITATION IS LIKELY TO BE A SIGNIFICANT PROBLEM, WHICH WAS NOT THE CASE IN THE INSTANT APPLICATION.

10. AS NOTED ABOVE, THE RESPONDENT TRADE UNION FILED A REPLY AND LISTS OF EMPLOYERS IN THE APPROPRIATE SCHEDULES. IN ADDITION, THE APPLICANT IN THE MATERIALS FILED WITH ITS APPLICATION LISTED EMPLOYERS WHO IT CLAIMED WERE INVOLVED WITH THESE PROCEEDINGS. THESE LISTS WERE NOT IDENTICAL AND, ACCORDINGLY, IMMEDIATELY AFTER THE TERMINAL DATE HAD PASSED, THE BOARD APPOINTED AN EXAMINER TO DETERMINE THE LIST OF EMPLOYERS IN THE UNIT OF EMPLOYERS. THE EXAMINER MET WITH THE PARTIES AND THE PARTIES AGREED TO A REVISED SCHEDULE "E" AND REVISED SCHEDULE "F". IN EFFECT, THESE REVISED SCHEDULES "E" AND "F" INCLUDED INCLUDED THE NAMES OF EVERY EMPLOYER WHO MIGHT HAVE AN INTEREST IN THIS APPLICATION, ACCORDING TO THE MATERIAL FILED WITH THE BOARD BY THE APPLICANT AND THE RESPONDENT. A PRELIMINARY LIST OF EM-

LOYERS HAVING BEEN THUS ESTABLISHED, THE REGISTRAR WAS DIRECTED TO FIX AN EMPLOYER DATE UNDER SECTION 77 OF THE BOARD'S RULES OF PROCEDURE AND TO SERVE NOTICE OF THIS APPLICATION UPON ALL THE EMPLOYERS ON THE REVISED SCHEDULES "E" AND "F". THE BOARD'S RULES OF PROCEDURE REQUIRE THAT EVERY EMPLOYER SERVED WITH NOTICE OF AN APPLICATION FOR ACCREDITATION SHALL FILE AN EMPLOYER INTERVENTION IN FORM 68 TOGETHER WITH AN ACCOMPANYING SCHEDULE "H" (LIST OF EMPLOYEES AFFECTED BY THE APPLICATION) BY THE EMPLOYER DATE. ON THAT DATE ONLY FIFTY-FIVE PER CENT OF THE EMPLOYERS SO NOTIFIED HAD MADE THE APPROPRIATE FILINGS. THE BOARD ACCORDINGLY APPOINTED A NUMBER OF EXAMINERS TO CONTACT THE REMAINING EMPLOYERS TO OBTAIN THE REQUIRED INFORMATION. BY THE DAY OF THE HEARING, ALL BUT THREE OF THE EMPLOYERS SERVED WITH NOTICE OF THIS APPLICATION HAD FILED AN EMPLOYER INTERVENTION WITH THE BOARD. THESE THREE REMAINING EMPLOYERS HAVE SINCE NOTIFIED THE BOARD OF THE INFORMATION REQUIRED IN THE EMPLOYER INTERVENTION.

11. IN ORDER TO MAKE THE DETERMINATION REQUIRED BY CLAUSE A OF SUBSECTION 1 OF SECTION 115 OF THE ACT, THE BOARD MUST FIRST DETERMINE THOSE EMPLOYERS IN THE UNIT OF EMPLOYERS ON THE DATE OF THE MAKING OF THE APPLICATION. THIS IS DETERMINED BY SECTION 114(2) WHICH STATES:

114.-(2) THE UNIT OF EMPLOYERS SHALL COMPRISE ALL EMPLOYERS AS DEFINED IN CLAUSE (c) OF SECTION 106 IN THE GEOGRAPHIC AREA AND SECTOR DETERMINED BY THE BOARD TO BE APPROPRIATE.

SECTION 106(c) REFERRED TO IN SECTION 114(2) READS AS FOLLOWS:

106.-(c) "EMPLOYER" MEANS A PERSON WHO OPERATES A BUSINESS IN THE CONSTRUCTION INDUSTRY, AND FOR PURPOSES OF AN APPLICATION FOR ACCREDITATION MEANS AN EMPLOYER FOR WHOSE EMPLOYEES A TRADE UNION OR COUNCIL OF TRADE UNIONS AFFECTED BY THE APPLICATION HAS BARGAINING RIGHTS IN A PARTICULAR GEOGRAPHIC AREA AND SECTOR OR AREAS OR SECTORS OR PARTS THEREOF;

TAKEN TOGETHER, SCHEDULE "E" AND SCHEDULE "F" COMPRISE THE COMPLETE LIST OF EMPLOYERS IN THE UNIT OF EMPLOYERS ON THE DATE OF THE MAKING OF THE APPLICATION, THAT IS, THOSE EMPLOYERS FOR WHOSE EMPLOYEES THE RESPONDENT HAS BARGAINING RIGHTS IN THE AREA AND SECTOR DETERMINED TO BE APPROPRIATE IN PARAGRAPH 8 ABOVE.

12. FORM 68, WHICH IS THE EMPLOYER INTERVENTION, REQUIRES AN EMPLOYER SERVED WITH NOTICE OF THE APPLICATION TO STATE WHETHER OR NOT THE RESPONDENT UNION IS ENTITLED TO BARGAIN ON BEHALF OF EMPLOYEES

AFFECTED BY THIS APPLICATION. BASED UPON THE STATEMENTS MADE IN THE FILINGS BY THE INDIVIDUAL EMPLOYERS WHICH HAVE BEEN ACCEPTED BY BOTH THE APPLICANT AND THE RESPONDENT, FOURTEEN EMPLOYERS WERE REMOVED FROM THE LIST OF SIXTY-FOUR EMPLOYERS IN THE REVISED SCHEDULE "E"; THREE ON THE GROUND THAT THEY WERE DUPLICATIONS OF EMPLOYERS ALREADY ON THE SCHEDULE AND ELEVEN ON THE GROUND THAT THE RESPONDENT TRADE UNION HAD NO BARGAINING RIGHTS FOR THOSE OF THEIR EMPLOYEES AFFECTED BY THIS APPLICATION. FOR THIS LAST REASON, ALL FOUR OF THE EMPLOYERS LISTED ON REVISED SCHEDULE "F" WERE DELETED FROM THAT SCHEDULE.

13. HAVING DETERMINED THE EMPLOYERS IN THE UNIT OF EMPLOYERS ON THE DATE OF THE MAKING OF THE APPLICATION, THE BOARD MUST THEN DETERMINE WHICH OF THOSE EMPLOYERS, WITHIN ONE YEAR PRIOR TO THE DATE OF THE MAKING OF THE APPLICATION, HAVE HAD EMPLOYEES IN THEIR EMPLOY FOR WHOM THE TRADE UNION HAS BARGAINING RIGHTS IN THE GEOGRAPHIC AREA AND SECTOR DETERMINED BY THE BOARD TO BE APPROPRIATE. THE EMPLOYERS FOUND BY THE BOARD TO HAVE HAD EMPLOYEES IN THE ONE-YEAR PERIOD COMPRISE THE EMPLOYERS WHO PROPERLY MAKE UP SCHEDULE "E". AS A RESULT OF THE FILINGS BY THE INDIVIDUAL EMPLOYERS ON FORM 68, THREE OF THE EMPLOYERS ORIGINALLY ON REVISED SCHEDULE "E" WERE TRANSFERRED TO SCHEDULE "F" BECAUSE THEY HAD NO EMPLOYEES IN THE ONE-YEAR PERIOD PRIOR TO MAY 3, 1971, THE DATE OF THE MAKING OF THE APPLICATION.

14. CANADIAN JOHNS-MANVILLE FILED AN OBJECTION TO THE APPLICATION AND APPEARED AT THE HEARING IN SUPPORT THEREOF. IT IS CLEAR, HOWEVER, THAT THE COMPANY IS BOUND BY A COLLECTIVE AGREEMENT WITH THE RESPONDENT TRADE UNION. WHILE IT IS APPRECIATED THAT THIS COMPANY WORKS WITH MIXED CREWS AND THAT ACCREDITATION MAY INVOLVE IT IN A HEAVY ADMINISTRATIVE LOAD, HAVING REGARD TO THE PURPOSE AND INTENT OF THE ACCREDITATION LEGISLATION, WE ARE UNABLE TO FIND THAT THESE ARE SUFFICIENT REASONS FOR EXCLUDING CANADIAN JOHNS-MANVILLE FROM THE LIST OF EMPLOYERS BOUND BY ANY ACCREDITATION ORDER THAT MAY ISSUE IN THIS CASE.

15. IN ACCORDANCE WITH THE FOREGOING CONSIDERATIONS, THE BOARD HAS COMPILED A FINAL SCHEDULE "E" AND A FINAL SCHEDULE "F". BY THE AGREEMENT OF THE APPLICANT AND THE RESPONDENT, THE BOARD HAS TAKEN AS THE CORRECT NAME OF EACH INDIVIDUAL EMPLOYER THE NAME STATED IN FORM 68 FILED BY THE EMPLOYER. THE FINAL SCHEDULES "E" AND "F" ARE AS FOLLOWS:

FINAL SCHEDULE "E"

ABICON LIMITED
ALCO SHEET METAL DIV.
POTVIN SHEET METAL LIMITED
APOLLO SHEET METAL CONTRACTORS

LANCASTER SHEET METAL
LIMITED
LORLEA ERECTORS LIMITED
MACKINNON MITCHELL &

LIMITED
 BARNES PLUMBING & HEATING
 BEAVER ENGINEERING LIMITED
 BENNETT & WRIGHT CONTRACTORS
 LIMITED
 BROOMS MECHANICAL CONTRACTING
 LIMITED
 CALORIFIC CONSTRUCTION
 CANADIAN JOHNS-MANVILLE
 CO., LIMITED
 COMMERCIAL & INDUSTRIAL
 INSULATIONS LIMITED
 DETAIL SHEET METAL LTD.
 DEWCON STRUCTURES LIMITED
 DOME METAL ERECTORS LTD.
 EDLAND BUILDING SYSTEMS
 HAMILTON
 ELMDON SHEET METAL LTD.
 E. S. FOX LIMITED
 FRASER-BRACE ENGINEERING
 COMPANY LIMITED
 GIFFIN SHEET METALS LIMITED
 GOODRAM BROS. LIMITED
 GUAY & LAKEMAN LTD.
 HEATHER & LITTLE LIMITED
 HOLEK-VOLLMER CORP. LTD.
 INDPRO LTD.
 INRIG ROOFING AND SHEET
 METAL COMPANY LIMITED
 W. E. JOCELYN ROOFING
 & SHEET METAL LTD.
 JULIAN ROOFING & SUPPLIES
 LIMITED
 KOLDFLOW REFRIGERATION
 LIMITED
 LAMPMAN METAL ERECTORS

ASSOCIATES LIMITED
 MAZUR PLUMBING & HEATING
 LIMITED
 R. MEAD STEEL ERECTORS
 MORRIS & THOMSON
 NATIONAL CONVEYOR COMPANY
 LTD.
 RIDDEL SHEET METAL &
 ROOFING LIMITED
 ROBERT SHEET METAL COMPANY
 LIMITED
 ROBERTSON-IRWIN LIMITED
 SCHREIBER BROTHERS LIMITED
 H. SCOTT & SONS LTD.
 JOHN E. SMITH & SON LATH,
 PLASTER & ACOUSTICAL
 CONTRACTORS (1968) LIMITED
 FRANK TAGGART & SONS LTD.
 HERBERT S. THOMSON &
 SON LIMITED
 TRANSWAY STEEL BUILDINGS
 LIMITED
 WALKER SHEET METAL &
 ROOFING LTD.
 WENTWORTH METAL ERECTORS
 WESTEEL-ROSCO LIMITED
 CONSTRUCTION DIVISION

FINAL SCHEDULE "F"

JANCO SHEET METAL LTD.
 MESLEY MACHINERY MOVERS & ERECTORS LTD.
 WILLIAMS WELDING LTD.

THE BOARD FINDS THAT THE NUMBER OF EMPLOYERS ON SCHEDULE "E", TOTALLING FORTY-SEVEN, IS THE NUMBER OF EMPLOYERS TO BE ASCERTAINED BY THE BOARD UNDER SECTION 115(1)(A) OF THE ACT.

16. THE NATURE OF THE WRITTEN EVIDENCE OF REPRESENTATION OF EMPLOYERS BY THE APPLICANT WAS DESCRIBED IN PARAGRAPHS 4 AND 5 OF THESE REASONS. ON THE BASIS OF ALL THE EVIDENCE BEFORE US, THE BOARD FINDS THAT ON THE DATE OF THE MAKING OF THE APPLICATION THE APPLICANT REPRESENTED THIRTY-TWO OF THE FORTY-SEVEN EMPLOYERS ASCERTAINED AS THE NUMBER OF EMPLOYERS UNDER SECTION 115(1)(A) OF THE ACT. THE THIRTY-TWO EMPLOYERS SO REPRESENTED BY THE APPLICANT IS THE NUMBER OF EMPLOYERS TO BE ASCERTAINED BY THE BOARD UNDER SECTION 115(1)(B) OF THE ACT. ACCORDINGLY, THE BOARD IS SATISFIED THAT A MAJORITY OF THE EMPLOYERS IN THE UNIT OF EMPLOYERS ARE REPRESENTED BY THE APPLICANT EMPLOYERS' ORGANIZATION.

17. THE ENTITLEMENT OF AN EMPLOYERS' ORGANIZATION TO ACCREDITATION IS BASED ON A "DOUBLE-MAJORITY". WE HAVE NOW DEALT WITH THE FIRST OF THE MAJORITIES THAT AN APPLICANT MUST OBTAIN, A MAJORITY OF EMPLOYERS IN THE UNIT OF EMPLOYERS. WE NOW TURN TO THE MATTER OF WHETHER THESE EMPLOYERS REPRESENT A MAJORITY OF THE EMPLOYEES INVOLVED. BY SECTION 115(1)(C) THE BOARD MUST ASCERTAIN THE FOLLOWING:

THE NUMBER OF EMPLOYEES OF EMPLOYERS IN CLAUSE (A) ON THE PAYROLL OF EACH SUCH EMPLOYER FOR THE WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING THE DATE OF THE APPLICATION OR IF, IN THE OPINION OF THE BOARD, SUCH PAYROLL PERIOD IS UNSATISFACTORY FOR ANY ONE OR MORE OF THE EMPLOYERS IN CLAUSE (A), SUCH OTHER WEEKLY PAYROLL PERIOD FOR ANY ONE OR MORE OF THE SAID EMPLOYERS AS THE BOARD CONSIDERS ADVISABLE.

EACH OF THE FORTY-SEVEN EMPLOYERS ON SCHEDULE "E" SET OUT IN PARAGRAPH 15 ABOVE HAS SUBMITTED WITH HIS EMPLOYER INTERVENTION A SCHEDULE "H" CONTAINING THE NAMES OF HIS EMPLOYEES, IF ANY, AFFECTED BY THE APPLICATION. BY SECTION 115(1)(C) THE RELEVANT WEEKLY PAYROLL PERIOD IS PRIMA FACIE THE WEEK IMMEDIATELY PRECEDING MAY 3, 1971, THE DATE OF THE MAKING OF THIS APPLICATION. PARAGRAPH 5 OF FORM 68, THE EMPLOYER INTERVENTION, READS AS FOLLOWS:

5. THE INTERVENER STATES THAT THE NUMBER OF EMPLOYEES ON THE PAYROLL FOR THE WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING THE DATE OF THE APPLICATION
 - * IS
 - * IS NOT REPRESENTATIVE OF THE NUMBER OF EMPLOYEES AFFECTED BY THIS APPLICATION NORMALLY EMPLOYED BY THE INTERVENER. (WHERE THE NUMBER IS NOT REPRESENTATIVE, GIVE DETAILS)

* STRIKE OUT IF NOT APPLICABLE.

THIS, OF COURSE, ALLOWS THE INDIVIDUAL EMPLOYER TO MAKE REPRESENTATIONS TO THE BOARD CONCERNING A MORE APPROPRIATE WEEKLY PAYROLL PERIOD. IN ITS DECISION, DATED JULY 26, 1971, THE BOARD DECIDED THAT ONLY CERTAIN EMPLOYERS WHO HAD GIVEN THE DETAILS REQUIRED BY THAT FORM WOULD HAVE THEIR REPRESENTATIONS ENTERTAINED BY THE BOARD. IN THE SAME DECISION THE BOARD APPOINTED AN EXAMINER TO OBTAIN ADDITIONAL FILINGS FROM EIGHT EMPLOYERS CONCERNING THE REPRESENTATIVE WEEKLY PAYROLL PERIOD. THREE OF THESE EMPLOYERS SUBSEQUENTLY WITHDREW THEIR REPRESENTATIONS RESPECTING THE REPRESENTATIVE WEEKLY PAYROLL PERIOD. THE FIVE REMAINING EMPLOYERS EACH FILED WITH THE BOARD'S EXAMINER THREE LISTS OF EMPLOYEES FOR DIFFERENT WEEKLY PAYROLL PERIODS. HAVING REGARD TO THIS MATERIAL, THE BOARD IS OF THE OPINION THAT THE WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING THE DATE OF THIS APPLICATION IS UNSATISFACTORY FOR THESE FIVE EMPLOYERS. THE APPLICANT AND THE RESPONDENT HAVE MET WITH THE BOARD'S EXAMINER CONCERNING THESE FILINGS AND, HAVING REGARD TO THEIR REPRESENTATIONS TO THE BOARD'S EXAMINER AND TO THEIR AGREEMENT THAT THE WEEKLY PAYROLL PERIOD FOR THESE EMPLOYERS SHOULD BE THE PERIOD WITH THE NUMBER OF EMPLOYEES CLOSEST TO THE AVERAGE OF THE THREE LISTS FILED BY EACH EMPLOYER, THE BOARD CONSIDERS IT ADVISABLE TO USE THE FOLLOWING WEEKLY PAYROLL PERIODS FOR THE FOLLOWING EMPLOYERS:

DEWCON STRUCTURES LIMITED

WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING JANUARY 9, 1971

ROBERT SHEET METAL COMPANY LIMITED

WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING OCTOBER 9, 1970

R. MEAD STEEL ERECTORS

WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING JULY 31, 1970

FRASER-BRACE ENGINEERING COMPANY LIMITED

WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING DECEMBER 11, 1970

BENNETT & WRIGHT CONTRACTORS LIMITED

WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING JULY 30, 1970.

FOR THE REMAINING FORTY-TWO EMPLOYERS THE BOARD IS OF THE OPINION THAT THE WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING MAY 3, 1971 IS SATISFACTORY.

18. ON THE BASIS OF ALL THE EVIDENCE BEFORE IT AND IN ACCORDANCE WITH THE FOREGOING CONSIDERATIONS, THE BOARD FINDS THAT THERE WERE 380 EMPLOYEES AFFECTED BY THE APPLICATION. THE 380 EMPLOYEES IS THE NUMBER OF EMPLOYEES TO BE ASCERTAINED BY THE BOARD UNDER SECTION 115(1)(c) OF THE ACT.

19. THE BOARD FURTHER FINDS THAT THE THIRTY-TWO EMPLOYERS REPRESENTED BY THE APPLICANT EMPLOYERS' ORGANIZATION EMPLOYED A TOTAL OF 354 EMPLOYEES IN THE WEEKLY PAYROLL PERIODS DETERMINED IN PARAGRAPH 17 AS THE PAYROLL PERIOD FOR THE PURPOSES OF SECTION 115(1)(c). THE BOARD IS THEREFORE SATISFIED THAT THE MAJORITY OF EMPLOYERS REPRESENTED BY THE APPLICANT EMPLOYED A MAJORITY OF EMPLOYEES AS ASCERTAINED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 115(1)(c).

20. HAVING REGARD TO ALL THE ABOVE FINDINGS, A CERTIFICATE OF ACCREDITATION WILL ISSUE TO THE APPLICANT FOR THE UNIT OF EMPLOYERS FOUND TO BE THE APPROPRIATE UNIT OF EMPLOYERS IN PARAGRAPH 8 AND, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 115(2) OF THE ACT, FOR SUCH OTHER EMPLOYERS FOR WHOSE EMPLOYEES THE RESPONDENT MAY AFTER MAY 3, 1971 OBTAIN BARGAINING RIGHTS THROUGH CERTIFICATION OR VOLUNTARY RECOGNITION IN THE GEOGRAPHIC AREA AND SECTOR SET OUT IN THE APPROPRIATE UNIT OF EMPLOYERS.

896-71-U: FRANK TAGGART & SON LTD. (APPLICANT) V. SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION LOCAL UNION 537 (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: BRIAN W. MORISON FOR THE APPLICANT, STANLEY SIMPSON AND EARL WEAVER FOR THE RESPONDENT.

DECISION OF THE BOARD: SEPTEMBER 13, 1971.

1. THE NAME "SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION LOCAL UNION 537, BRANTFORD BRANCH" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION LOCAL UNION 537".

2. THE APPLICANT HAS APPLIED UNDER THE PROVISIONS OF SECTION 82 OF THE LABOUR RELATIONS ACT, R.S.O. 1970 CHAPTER 232, FOR A DECLARATION THAT THE RESPONDENT CALLED OR AUTHORIZED AN UNLAWFUL STRIKE AT THE APPLICANT'S PROJECT AT BRANTFORD CONTRARY TO THE PROVISIONS OF SECTION 63(2) OF THE ACT.

3. AS A MEMBER OF THE HAMILTON AND DISTRICT SHEET METAL CONTRACTORS ASSOCIATION, THE APPLICANT IS BOUND BY A COLLECTIVE AGREEMENT WITH THE RESPONDENT WHICH EXPIRED ON APRIL 30, 1971, HEREIN REFERRED TO AS THE HAMILTON AGREEMENT. APART FROM THE HAMILTON AGREEMENT (WHICH COVERS THE APPLICANT'S SHOP AT STONEY CREEK) THE APPLICANT IS NOT BOUND BY ANY OTHER COLLECTIVE AGREEMENT WITH THE RESPONDENT OR WITH ANY SISTER LOCAL OF THE RESPONDENT.

4. FOLLOWING THE APPOINTMENT OF A CONCILIATION OFFICER, THE MINISTER, BY LETTER DATED JULY 27, 1971, ADVISED THE PARTIES THAT HE HAD DECIDED NOT TO APPOINT A BOARD OF ARBITRATION WITH RESPECT TO THE DISPUTE BETWEEN THE PARTIES. ON AUGUST 13, 1971, THE RESPONDENT AUTHORIZED A STRIKE OF THE APPLICANT'S EMPLOYEES ALONG WITH ALL EMPLOYEES OF EMPLOYERS REPRESENTED BY THE HAMILTON AND DISTRICT SHEET METAL CONTRACTORS ASSOCIATION WHO WERE COVERED BY THE HAMILTON AGREEMENT. THE APPLICANT'S EMPLOYEES WORKING ON A PROJECT AT BRANTFORD ALSO JOINED IN THE STRIKE.
5. APPROXIMATELY EIGHTY PER CENT OF THE WORK BEING INSTALLED BY THE APPLICANT AT THE BRANTFORD PROJECT WAS FABRICATED AT THE APPLICANT'S SHOP AT STONEY CREEK AND THE BALANCE WAS FABRICATED BY THE EMPLOYEES AT THE JOB SITE.
6. OTHER CONTRACTORS WITH SHOPS AT BRANTFORD ARE COVERED BY A COLLECTIVE AGREEMENT, HEREIN REFERRED TO AS THE BRANTFORD AGREEMENT. EMPLOYEES COVERED BY THE BRANTFORD AGREEMENT ARE NOT ON STRIKE.
7. IT APPEARS THAT THE RESPONDENT HAS DIVIDED ITS GEOGRAPHICAL JURISDICTION INTO THREE AREAS OR BRANCHES FOR THE PURPOSE OF ADMINISTERING ITS AFFAIRS. THE THREE BRANCHES ARE KNOWN AS THE HAMILTON BRANCH, THE BRANTFORD BRANCH AND THE PENINSULA BRANCH. THIS ADMINISTRATIVE SUBDIVISION HAS NOT ALTERED THE STATUS OF THE RESPONDENT AS A TRADE UNION BY CREATING THREE SEPARATE TRADE UNIONS. LOCAL 537 CONTINUES TO BE ONE ENTITY AND A SINGLE TRADE UNION. THE COLLECTIVE AGREEMENTS ENTERED INTO BY LOCAL 537 VARY IN ACCORDANCE WITH THE LOCATION OF THE CONTRACTOR'S SHOP. IF A CONTRACTOR'S SHOP IS SITUATED WITHIN THE AREA OF THE HAMILTON BRANCH, LOCAL 537 ENTERS INTO A HAMILTON BRANCH AGREEMENT WITH THAT CONTRACTOR. IF ON THE OTHER HAND ONE CONTRACTOR HAS A SHOP WITHIN THE GEOGRAPHICAL AREA WITHIN THE BRANTFORD BRANCH, LOCAL 537 SIGNS A BRANTFORD BRANCH AGREEMENT WITH THAT CONTRACTOR. THE SAME PROCEDURE IS FOLLOWED WITH CONTRACTORS HAVING SHOPS IN THE PENINSULA AREA. HOWEVER, WHERE A CONTRACTOR IS BOUND BY THE PROVISION OF THE HAMILTON BRANCH AGREEMENT, THAT AGREEMENT COVERS NOT ONLY WORK PERFORMED AT THE CONTRACTOR'S SHOP BUT ALSO COVERS INSTALLATIONS PERFORMED AT LOCATIONS OUTSIDE THE HAMILTON AREA. IF, AS IN THIS CASE, LOCAL 537 IS A PARTY TO A COLLECTIVE AGREEMENT WITH A CONTRACTOR WHOSE SHOP IS IN THE HAMILTON AREA AND A CONTRACTOR SUBSEQUENTLY ENGAGES IN A PROJECT IN THE BRANTFORD AREA THE BRANTFORD WORK IS COVERED BY THE HAMILTON AGREEMENT. EVEN THOUGH THE CONTRACTOR MAY HAVE A SMALL FABRICATING SHOP AT THE BRANTFORD SITE THIS FACTOR DOES NOT REMOVE THE WORK FROM THE HAMILTON AGREEMENT AND DOES NOT OF ITSELF ENTITLE THE CONTRACTOR TO A SEPARATE COLLECTIVE AGREEMENT COVERING THE BRANTFORD WORK.
8. WHILE THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND RESPONDENT COULD HAVE BEEN MORE EXPLICIT IN THE MANNER IN WHICH

THE GEOGRAPHIC AREA OF THE BARGAINING UNIT IS DEFINED, WE FIND THAT THE INTENT OF THE AGREEMENT IS THAT IT WOULD COVER ALL SHEET METAL WORKERS AND REGISTERED APPRENTICES OF THE APPLICANT EMPLOYED AT OR WORKING OUT OF THE APPLICANT'S SHOP AT STONEY CREEK. THE COLLECTIVE AGREEMENT PROVIDES FOR THE PAYMENT OF MILEAGE RATES TO POINTS OUTSIDE OF THE HAMILTON AREA INCLUDING BRANTFORD. WE ACCORDINGLY FIND THAT ALL THE WORK PERFORMED BY THE APPLICANT'S EMPLOYEES AT BRANTFORD COMES UNDER THE TERMS OF THE HAMILTON COLLECTIVE AGREEMENT. THE FACT THAT SOME OF THE APPLICANT'S EMPLOYEES RESIDE IN BRANTFORD RATHER THAN HAMILTON DOES NOT ALTER THE SITUATION. ALL THE RESPONDENT'S EMPLOYEES WORKING ON THE BRANTFORD PROJECT, INCLUDING THOSE WHO RESIDE IN BRANTFORD, HAMILTON OR ELSEWHERE ARE COVERED BY THE PROVISIONS OF THE HAMILTON AGREEMENT. THESE EMPLOYEES WERE HIRED BY THE APPLICANT PURSUANT TO THE PROVISIONS OF THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES AND ARE BOUND BY THE TERMS OF THAT AGREEMENT.

9. SINCE ALL THE TIME PROVISIONS REFERRED TO IN SECTION 63(2) OF THE ACT HAD BEEN SATISFIED BEFORE THE RESPONDENT AUTHORIZED THE STRIKE, WE ACCORDINGLY FIND THAT THE RESPONDENT HAS NOT CONTRAVENED ANY OF THE PROVISIONS OF THAT SECTION.

10. THE BOARD IS THEREFORE NOT ABLE TO FIND THAT THE STRIKE CALLED OR AUTHORIZED BY THE RESPONDENT IS UNLAWFUL AND THE APPLICATION IS ACCORDINGLY DISMISSED.

828-71-R: FRED WEPPLER, DONALD WRIGHT, BERNIE STEVENSON AND LARRY HAMEL (APPLICANTS) V. INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA AFL, CIO-CLC (RESPONDENT) V. SEVEN UP (ONTARIO) LIMITED (INTERVENER).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS J.D. BELL AND A. MAIN.

APPEARANCES AT THE HEARING: FRED WEPPLER, DON WRIGHT, LARRY HAMEL AND BERNIE STEVENSON FOR THE APPLICANTS; B.A. DUNN AND DAVID WAGNER FOR THE RESPONDENT; P.M. CAMPBELL AND W.S. COOK FOR THE INTERVENER.

DECISION OF O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBER A. MAIN: SEPTEMBER 13, 1971.

1. THE NAME "INTERNATIONAL UNION OF UNITED BREWERY FLOUR CEREAL SOFT DRINK & DISTILLERY WORKERS OF AMERICA" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA AFL, CIO-CLC".

2. THIS IS AN APPLICATION PURSUANT TO SECTION 49(3) (FORMERLY SECTION 43)) OF THE LABOUR RELATIONS ACT. THE APPLICANT SUBMITTED THE NAMES OF A NUMBER OF EMPLOYEES IN THE BARGAINING UNIT AND SUBSEQUENTLY PRIOR TO THE TERMINAL DATE A NUMBER OF THOSE EMPLOYEES WHO HAD SIGNED THE DOCUMENTS IN SUPPORT OF THE APPLICATION FILED FURTHER DOCUMENTS WHICH INDICATED THAT THEY DID WISH TO BE REPRESENTED BY THE TRADE UNION. THESE REVOCATION DOCUMENTS WERE SUBMITTED PRIOR TO THE TERMINAL DATE AS IS DETERMINED UNDER SECTION 92(2)(J) (FORMERLY SECTION 72(2)(J)) OF THE ACT.

3. THE INTERVENER SUBMITTED THAT THE BOARD SHOULD NOT ACCEPT THE DOCUMENTS OF REVOCATION AS THERE WAS NO PROVISION UNDER SECTION 49(3) OF THE ACT FOR ALLOWING THE SUBMISSION OF SUCH DOCUMENTS. HAVING REGARD TO THE REPRESENTATIONS WE ARE OF THE OPINION THAT IT IS OPEN TO AN APPLICANT TO FILE ADDITIONAL SIGNATURES IN SUPPORT OF THE PETITION PRIOR TO THE TERMINAL DATE AND SIMILARLY IT IS OPEN TO EMPLOYEES OR THE APPLICANT TO FILE DOCUMENTS REVOKING THEIR SIGNATURES PRIOR TO THE TERMINAL DATE. A SIMILAR VIEW WAS TAKEN BY THIS BOARD IN JAMES MOIR V. BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 415 V. GORMAN ECKERT AND COMPANY LIMITED V. GROUP OF EMPLOYEES, 1969 APRIL, OLRB MTHLY. REP. P. 81, AND WE SEE NO REASON TO DEPART FROM THE DECISION IN THAT CASE. THE EVIDENCE OF REVOCATION THEREFORE REDUCES THE NUMBER OF SIGNATURES ON THE PETITION FILED BY THE APPLICANT TO LESS THAN FIFTY PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT AS OF THE DATE THE APPLICATION WAS MADE.

4. SINCE LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF THE RESPONDENT UNION IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION ON AUGUST 18, 1971 THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING THE NUMBER OF PERSONS WHO HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION UNDER SECTION 49(3) OF THE SAID ACT THE APPLICATION IS DISMISSED.

DECISION OF BOARD MEMBER J.D. BELL: SEPTEMBER 13, 1971.

1. THE MAJORITY OF THE BOARD CAN SEE NO REASON TO DEPART FROM THE DECISION OF THE BOARD IN JAMES MOIR V. BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 415 V. GORMAN ECKERT AND COMPANY LIMITED V. GROUP OF EMPLOYEES, 1969 APRIL, OLRB MTHLY. REP. P. 81. BOARD MEMBER H.F. IRWIN DISSENTED IN THE ABOVE CASE ON THE WEIGHT GIVEN TO THE PETITION FILED IN OPPOSITION TO THE APPLICATION.

HOWEVER, ON PAGE 91 PARAGRAPHS 9 AND 10 HE STATES:

"WHEN, AS IN THE INSTANT CASE, THE BOARD GIVES WEIGHT TO THE PETITION SIGNED BY EMPLOYEES IN OPPOSITION TO THE APPLICATION FOR TERMINATION OF BARGAINING RIGHTS, THE ESTABLISHED PRACTICE OF THE BOARD HAS BEEN TO CANCEL OUT SIGNATURES OF THOSE EMPLOYEES WHICH APPEAR ON BOTH PETITIONS. IF THIS PROCEDURE REDUCES THE NUMBER OF SIGNATURES ON THE PETITION FILED BY THE APPLICANT TO LESS THAN 50 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT AS OF THE DATE THE APPLICATION WAS MADE, THE APPLICATION IS DISMISSED. THIS IS BOARD POLICY AND I AM BOUND BY IT.

"THIS PRACTICE, HOWEVER, HAS CAUSED ME MUCH CONCERN FOR A LONG PERIOD OF TIME. I HAVE VERY SERIOUS DOUBT THAT IT IS IN HARMONY WITH THE PURPOSE AND INTENT OF THE PROVISIONS OF SECTION 43 OF THE LABOUR RELATIONS ACT."...

2. I FIND MYSELF IN THE SAME POSITION. I AM BOUND BY BOARD POLICY. HOWEVER, I TOO AM CONCERNED ABOUT THIS PRACTICE AND AGREE WITH THE OPINION OF BOARD MEMBER IRWIN WHICH HE SO ABLELY STATED IN PARAGRAPHS 10 THROUGH 14 - PAGES 91 THROUGH 93 OF THE GORMAN ECKERT CASE.

740-71-U: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. TEKPAK AUTOMATED SYSTEMS LIMITED (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND J. D. BELL.

APPEARANCES AT THE HEARING: GEORGE MILLER AND PATRICK MURPHY FOR THE APPLICANT; F. R. VON VEH, G. B. REDFEARN AND R. D. CROOKS FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER J. D. BELL:
SEPTEMBER 9, 1971.

1. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION AGAINST THE NAMED RESPONDENT FOR ENGAGING IN AN ALLEGED UNLAWFUL LOCKOUT CONTRARY TO SECTION 54 OF THE LABOUR RELATIONS ACT.

2. THE FACTS DO NOT APPEAR TO BE IN DISPUTE AND ARE AS FOLLOWS: FOLLOWING THE CERTIFICATION OF THE APPLICANT CERTAIN NEGOTIATIONS ENDED BETWEEN THE PARTIES WHEREIN A CONCILIATION OFFICER WAS APPOINTED. THESE NEGOTIATIONS DID NOT PROVE FRUITFUL TOWARDS A FIRST COLLECTIVE AGREEMENT AND ON JUNE 14, 1971, THE MINISTER ADVISED THE PARTIES THAT HE DID NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD. ON JUNE 25, 1971, A MEDIATOR WAS APPOINTED AT THE REQUEST OF THE APPLICANT IN THIS MATTER AND HE CONVENED A MEETING BETWEEN THE PARTIES ON JUNE 30, 1971. THE NEXT DAY, JULY 1, 1971, THE RESPONDENT POSTED A NOTICE ON ITS PREMISES STATING THAT THE OFFICE EMPLOYEES WERE LOCKED OUT. AS OF THE DATE OF THIS APPLICATION, FOUR OFFICE EMPLOYEES HAVE NOT BEEN PERMITTED TO RETURN TO WORK.

3. THE APPLICANT ALLEGES THAT THE LOCKOUT IS ILLEGAL ON THE BASIS THAT IT WAS ENGAGED IN BY THE RESPONDENT PRIOR TO THE RELEASE TO THE PARTIES OF THE REPORT OF THE MEDIATOR AS REQUIRED BY SECTION 54(2)(A) OF THE ACT. THE RESPONDENT ON THE OTHER HAND, MAINTAINS THAT THE LOCK OUT IS LEGAL IN VIEW OF ITS COMPLIANCE WITH THE TIME LIMITS FOLLOWING THE RELEASE TO THE PARTIES OF THE NOTICE OF THE MINISTER THAT HE DOES NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD, PURSUANT TO SECTION 54(2)(B) OF THE ACT.

4. THE PROVISIONS OF THE LABOUR RELATIONS ACT DEALING WITH THE APPOINTMENT OF A MEDIATOR IS SECTION 14 WHICH PROVIDES AS FOLLOWS:

(1) WHERE THE MINISTER IS REQUIRED OR AUTHORIZED TO APPOINT A CONCILIATION OFFICER, THE MINISTER MAY, ON THE REQUEST IN WRITING OF THE PARTIES, APPOINT A MEDIATOR SELECTED BY THEM JOINTLY BEFORE HE HAS APPOINTED A CONCILIATION BOARD OR HAS INFORMED THE PARTIES THAT HE DOES NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD.

(2) WHERE THE MINISTER HAS APPOINTED A MEDIATOR AFTER A CONCILIATION OFFICER HAS BEEN APPOINTED, THE APPOINTMENT OF THE CONCILIATION OFFICER IS THEREBY TERMINATED.

5. IT THUS BECOMES READILY APPARENT THAT THE SECTION WAS NOT COMPLIED WITH IN THAT THE MEDIATOR WAS NOT SELECTED BY THE PARTIES JOINTLY IN WRITING AND THAT THE ALLEGED APPOINTMENT TOOK PLACE AFTER THE ISSUANCE OF THE "NO BOARD" REPORT IN THIS MATTER. IT WOULD APPEAR THAT, NO DOUBT, THIS WAS A CASE OF VOLUNTARY MEDIATION.

6. SECTION 54(2) OF THE ACT PROVIDES AS FOLLOWS:

(2) WHERE NO COLLECTIVE AGREEMENT IS IN OPERATION, NO EMPLOYEE SHALL STRIKE AND NO EMPLOYER SHALL LOCK OUT AN EMPLOYEE UNTIL THE MINISTER HAS APPOINTED A CONCILIATION OFFICER OR A MEDIATOR UNDER THIS ACT AND,

(A) SEVEN DAYS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES THE REPORT OF A CONCILIATION BOARD OR MEDIATOR; OR

(B) FOURTEEN DAYS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES A NOTICE THAT HE DOES NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD,

AS THE CASE MAY BE.

7. HAVING REGARD TO THE ABOVE CIRCUMSTANCES, AND IN PARTICULAR TO OUR FINDINGS IN PARAGRAPH 5 HEREIN, WE FIND THAT THERE WAS NO APPOINTMENT BY THE MINISTER OF A MEDIATOR "UNDER THIS ACT" AND THAT PARAGRAPH (A) OF SECTION 54(2) OF THE ACT IS THEREFORE RENDERED INAPPLICABLE TO THE FACTS OF THE INSTANT CASE.

8. HAVING REGARD TO THESE CIRCUMSTANCES, WE THEREFORE FIND THAT THE TIME LIMITS AS SET OUT IN PARAGRAPH (B) OF SECTION 54(2) HAVE BEEN COMPLIED WITH BY THE RESPONDENT, AND THAT THE APPLICANT THEREFORE HAS FAILED TO MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED.

9. THE APPLICATION IS THEREFORE DISMISSED.

DECISION OF BOARD MEMBER D. B. ARCHER: SEPTEMBER 9, 1971.

1. I DISSENT.

2. HAVING REGARD TO THE EVIDENCE AND TO THE SUBMISSIONS OF THE PARTIES, I FIND THAT THERE ARE ISSUES OF FACT AND LAW IN THIS MATTER WHICH MIGHT PROPERLY BE DETERMINED BY A PROVINCIAL JUDGE. I WOULD ACCORDINGLY CONSENT TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR ALLEGEDLY VIOLATING SECTION 54 OF THE ACT.

582-71-M: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWN OF AURORA (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: W. A. ACTON AND JACK BIRD FOR THE APPLICANT, RICHARD S. THOMSON, Q.C., AND K. B. RODGER FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER E. BOYER:
SEPTEMBER 13, 1971.

1. THIS IS AN APPLICATION UNDER SECTION 79(2) OF THE LABOUR RELATIONS ACT.

2. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED JULY 23, 1971 AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, WE FIND THAT DONALD PATRICK SPENDS 70 PER CENT OF HIS TIME ON MANUAL WORK SUCH AS GENERAL REPAIR AND MAINTENANCE WORK AND ROUTINE CLEANING AND SCRUBBING. WHILE MR. PATRICK EXERCISES CERTAIN POWERS OF RECOMMENDATIONS AND SOME LIMITED AUTHORITY IN PRESCRIBED ROUTINE AREAS UNDER THE DIRECTION AND CONTROL OF THE ARENA MANAGER, HE HAS NO REAL INDEPENDENT DISCRETIONARY AUTHORITY. WE ACCORDINGLY FIND THAT ANY AUTHORITY EXERCISED BY MR. PATRICK CANNOT BE PROPERLY CHARACTERIZED AS MANAGERIAL AUTHORITY WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. WE FURTHER FIND THAT MR. PATRICK IS NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF THAT SECTION.

3. WE THEREFORE FIND THAT MR. PATRICK IS AN EMPLOYEE OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

DECISION OF BOARD MEMBER F. W. MURRAY: SEPTEMBER 13, 1971.

1. I DISSENT.

2. I WOULD HAVE FOUND THAT MR. PATRICK EXERCISED MANAGERIAL FUNCTIONS AND ACCORDINGLY SHOULD BE EXCLUDED FROM THE BARGAINING UNIT.

3. THE REASONING FOR THIS DECISION IS BASED ALMOST EXCLUSIVELY AS A RESULT OF A RECENT BOARD DECISION, FILE NO. 51-70-R, RESPECTING THE FEDERAL PACKAGING AND PARTITION COMPANY LIMITED, WHEREIN THE BOARD ANALYZED THE DUTIES AND RESPONSIBILITIES OF A MRS. DALE AND MRS. JOHNSTON AND FOUND THE SUBJECTS IN THAT DECISION EXERCISED MANAGERIAL FUNCTIONS AND WERE ACCORDINGLY EXCLUDED FROM THE BARGAINING UNIT.

4. WHILE IN THE FEDERAL PACKAGING CASE, THE EMPLOYEES INVOLVED DID MANUAL WORK FOR A SMALLER PROPORTION OF THEIR WORKING DAY THAN DID MR. PATRICK IN TOTAL, IT IS QUITE CLEAR THAT THEY DID NOT HAVE THE SAME AUTHORITY TO DEAL WITH PERSONNEL UNDER THEIR SUPERVISION AS DOES MR. PATRICK.

5. IN THE FEDERAL PACKAGING CASE, THE SUBJECTS DID NOT HAVE THE AUTHORITY TO HIRE OR TO RECOMMEND HIRING. MR. PATRICK, IN THE CASE AT BAR, RECOMMENDS HIRING, AND IN ALL CASES HIS RECOMMENDATIONS HAVE BEEN CARRIED THROUGH. ON TWO OCCASIONS AN INTERVIEW WAS CON-

DUCTED, AND ON BOTH OF THESE OCCASIONS, THE JOB APPLICANT WAS INTERVIEWED BY BOTH MR. BATSON AND MR. PATRICK, WITH MR. PATRICK PARTICIPATING IN THE QUESTIONING OF THE APPLICANTS, AND THE DECISIONS REACHED FOLLOWING THESE INTERVIEWS WAS A JOINT DECISION.

6. IN THE FEDERAL PACKAGING CASE, THE SUBJECTS NORMALLY WOULD CLEAR THE GRANTING OF TIME OFF TO EMPLOYEES ONLY AFTER CLEARING WITH THEIR SUPERVISOR, AND ONLY IN A CASE OF OBVIOUS ILLNESS WOULD THE SUBJECTS PERMIT EMPLOYEES TO GO HOME ON THEIR OWN INITIATIVE. IN THE CASE AT BAR, MR. PATRICK GRANTS TIME OFF WITHOUT CHECKING WITH THE MANAGER OF THE ARENA, MR. BATSON, AND INFORMS MR. BATSON, ONLY AFTER THE EVENT.

7. THE SUBJECTS IN THE FEDERAL PACKAGING CASE WERE PAID ON AN HOURLY RATE AND PAID FOR OVERTIME WORK, WHEREAS MR. PATRICK, WHILE HE WAS FIRST HIRED AS AN HOURLY RATED EMPLOYEE, WAS APPOINTED TO THE POSITION OF FOREMAN BY THE COMMUNITY CENTRE BOARD, AND ADVISED OF THIS APPOINTMENT BY A MEMBER OF THAT BOARD (AND NOT BY MR. BATSON) AND AT THAT TIME HE WAS PUT ON A SALARY, AND MORE RECENTLY, HE HAS BEEN PAID FOR OVERTIME.

8. IN BOTH THE FEDERAL PACKAGING CASE AND THE CASE AT BAR, THE SUBJECTS CONVERSE WITH THEIR SUPERVISOR CONCERNING THE WORK PROGRESS OF THE EMPLOYEES UNDER THEM, HOWEVER, IN THE CASE AT BAR, MR. PATRICK HAS ATTENDED MEETINGS OF THE ONTARIO ARENA ASSOCIATION IN THE COMPANY OF HIS SUPERVISOR MR. BATSON. THESE MEETINGS DEAL WITH THE GENERAL OPERATING PROBLEMS OF COMMON INTEREST IN ARENA OPERATIONS.

9. WITH REGARD TO DISMISSAL, IN THE FEDERAL PACKAGING CASE, IN THE ONLY CASE WHEN THE SUBJECT WAS REQUIRED TO DISMISS SOMEONE, IT WAS AS A RESULT OF BEING TOLD TO DO SO BY HER SUPERVISOR, WHO HAD INDEPENDENTLY MADE THIS DECISION. IN THE CASE AT BAR, THE ONLY CASE WHERE SOMEONE'S DISMISSAL CAME UP, MR. PATRICK RECOMMENDED TO HIS SUPERVISOR THAT HE BE LET GO, BUT MR. BATSON AND MR. PATRICK DECIDED DURING A DISCUSSION CONCERNING THE EMPLOYEE'S PROBLEMS TO GIVE THE EMPLOYEE ANOTHER WEEK'S TRY, DURING WHICH TIME THE EMPLOYEE QUIT. FROM THE ABOVE I WOULD CONCLUDE THAT MR. PATRICK THEREFORE HAD MORE AUTHORITY TO INITIATE ACTION THAN THE SUBJECTS IN THE FEDERAL PACKAGING CASE.

10. IN THE FEDERAL PACKAGING CASE, PERSONNEL SEEKING SOME ARRANGEMENT WOULD GO TO THE SUPERVISOR WHO HAD AUTHORITY OVER MRS. JOHNSTON AND MRS. DALE IN SUCH MATTERS AS SEEKING TIME OFF, ETC., WHEREAS IN THE CASE AT BAR, THE EMPLOYEES UNDER THE SUPERVISION OF MR. PATRICK WOULD GO DIRECTLY TO MR. PATRICK AND NOT TO MR. BATSON IN SEEKING ANY SPECIAL ARRANGEMENTS, AND AS HAS BEEN STATED BEFORE, MR. PATRICK HAD, AND EXERCISED, AUTHORITY TO GRANT OR DENY SUCH SPECIAL ARRANGEMENTS.

11. RUNNING THROUGH THE TWO CASES ONE CAN FIND MANY SITUATIONS IN WHICH THE SUBJECTS UNDER CONSIDERATION IN THE FEDERAL PACKAGING CASE AND MR. PATRICK EXERCISED SIMILAR AUTHORITY, HOWEVER, FROM AN ANALYSIS OF THE EVIDENCE, I WOULD HAVE CONCLUDED THAT IN THE FRAMEWORK OF THEIR GENERAL DAY TO DAY DUTIES, MR. PATRICK HAD A GREATER DEGREE OF MANAGERIAL AUTHORITY OVER EMPLOYEES THAN DID THE SUBJECTS INVOLVED IN THE FEDERAL PACKAGING CASE, DESPITE THE FACT THAT HE SPENT A GREATER PROPORTION OF HIS TIME DOING MANUAL WORK THAN DID THE EMPLOYEES IN THE FEDERAL PACKAGING CASE.

12. THERE ARE SEVERAL OTHER POINTS OF DIFFERENCE BETWEEN THE FEDERAL PACKAGING CASE AND THE CASE AT BAR. IN THE FEDERAL PACKAGING CASE, AT NO TIME DID THE SUBJECTS EVER SPELL OFF, OR REPLACE THEIR SUPERVISOR, NOR AT ANY TIME WERE THEY EVER IN CHARGE OF THE OPERATION ALONE, WHEREAS IN THE CASE AT BAR, MR. PATRICK IS REGULARLY THE ONLY ONE IN CHARGE IN THE ARENA, AND ACTUALLY REPLACES THE ARENA MANAGER WHEN HE IS AWAY, EITHER ON VACATION, ILLNESS, OR FOR ANY OTHER REASON THE MANAGER ABSENTS HIMSELF FROM HIS REGULAR DUTIES. MOREOVER, MR. PATRICK IS RESPONSIBLE FOR PURCHASING MOST OF THE EQUIPMENT AND SUPPLIES USED IN THE MAINTENANCE OF THE ARENA, MAKING INDEPENDENT DECISIONS CONCERNING THE QUALITY AND QUANTITY OF MATERIALS TO BE USED IN THE MAINTENANCE AND GENERAL REPAIR OPERATIONS. IN PURCHASING, AND INVOLVING EXPENDITURES OF BETWEEN \$200.00 TO \$400.00, THESE MATTERS WOULD BE DISCUSSED WITH MR. BATSON AND MR. BATSON MAY LIMIT THE SUGGESTED AMOUNTS, BUT TO DATE, HE HAS NOT DONE SO. THESE LARGER EXPENDITURES WOULD ONLY OCCUR IN THE SPRING AND NOT IN THE GENERAL WEEKLY OR MONTHLY PURCHASES OF EQUIPMENT. IN THE FEDERAL PACKAGING CASE, THE SUBJECTS HAD NOTHING WHATSOEVER TO DO WITH THE PURCHASING OF EITHER EQUIPMENT OR MATERIAL USED IN THEIR WORK.

13. IN THE FEDERAL PACKAGING CASE THE BOARD FOUND THAT THE SUBJECTS EXERCISED A MANAGERIAL FUNCTION AND WERE ACCORDINGLY EXCLUDED FROM THE BARGAINING UNIT. I WOULD HAVE FOUND THAT MR. PATRICK EXERCISED A GREATER DEGREE OF MANAGERIAL FUNCTIONS THAN THE SUBJECTS INVOLVED IN THE FEDERAL PACKAGING CASE AND HAVING FOUND THAT MR. PATRICK EXERCISED A MANAGERIAL FUNCTION TO THIS EXTENT, I WOULD HAVE ACCORDINGLY EXCLUDED HIM FROM THE BARGAINING UNIT.

18666-70-U: TORONTO MAILERS' UNION, No. 5 (COMPLAINANT) V. TORONTO STAR LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: J. A. RYDER FOR THE COMPLAINANT, DONALD J. M. BROWN FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER J. D. BELL:
SEPTEMBER 15, 1971.

1. THIS IS AN APPLICATION UNDER SECTION 79 (FORMERLY SECTION 65) OF THE LABOUR RELATIONS ACT. THE COMPLAINT IN THIS MATTER WITH REGARD TO WILLIAM MCGRIL IS WITHDRAWN AT THE REQUEST OF THE COMPLAINANT WITH THE CONSENT OF THE RESPONDENT BY LEAVE OF THE BOARD.

2. THE COMPLAINANT HAS ALLEGED THAT DAVID FERGUSON WAS DISCHARGED BY THE RESPONDENT CONTRARY TO SECTION 58(A) (FORMERLY SECTION 50(A)) OF THE ACT AND THE COMPLAINANT REQUESTS THAT FERGUSON BE REINSTATED WITH COMPENSATION AND ALSO THAT THE BOARD ISSUE A CEASE AND DESIST ORDER DIRECTING CERTAIN OFFICIALS OF THE RESPONDENT TO REFRAIN FROM UNLAWFULLY INTERFERING WITH THE COMPLAINANT'S ORGANIZATIONAL CAMPAIGN AND TO FURTHER REFRAIN FROM UNLAWFULLY INTERFERING WITH THE RIGHT OF THE EMPLOYEES TO JOIN A TRADE UNION OF THEIR OWN CHOICE. FERGUSON WAS DISCHARGED BY THE RESPONDENT ON NOVEMBER 6, 1970 ON THE GROUNDS THAT HE INTIMIDATED AND ATTEMPTED TO COERCE AN EMPLOYEE IN THE RESPONDENT'S MAIL ROOM TO SIGN A UNION CARD. IN ITS DECISION DATED APRIL 21, 1971 IN THIS MATTER, THE BOARD SET OUT THE RESPONDENT'S POSITION AS FOLLOWS:

2. THE RESPONDENT HAS TAKEN THE POSITION THAT MR. FERGUSON WAS DISCHARGED FOR CAUSE. THE RESPONDENT ALLEGES THAT "MR. FERGUSON'S EMPLOYMENT WAS TERMINATED BY THE COMPANY FOR INTIMIDATING AND ATTEMPTING TO COERCE AN EMPLOYEE IN THE MAIL ROOM TO SIGN A UNION CARD." IN SUPPORT OF ITS ALLEGATION, THE RESPONDENT CALLED AS A WITNESS MR. C. J. DAVIES, THE RESPONDENT'S MANAGER OF INDUSTRIAL RELATIONS. MR. DAVIES TESTIFIED THAT FOLLOWING A COMPLAINT BY AN EMPLOYEE THAT THE EMPLOYEE HAD BEEN THREATENED BY MR. FERGUSON, MR. FERGUSON WAS SUMMARILY DISCHARGED. ...

5. THE RESPONDENT ALSO TOOK THE POSITION THAT IT WAS NOT THE BOARD'S FUNCTION TO DETERMINE WHETHER FERGUSON HAD ACTUALLY INTIMIDATED OR ATTEMPTED TO COERCE AN EMPLOYEE AS ALLEGED. THE RESPONDENT ARGUED THAT IF THE BOARD WERE SATISFIED THAT THE RESPONDENT DISCHARGED FERGUSON BECAUSE THE RESPONDENT BELIEVED THAT FERGUSON HAD ENGAGED IN SUCH WRONGFUL ACTIVITY, THE COMPLAINANT WOULD THEN ACCORDINGLY HAVE FAILED TO ESTABLISH THE ONUS ON IT OF PROVING THAT FERGUSON WAS DISCHARGED CONTRARY TO THE ACT. ...

3. MR. PHIL LILLIE, THE RESPONDENT'S MAILING ROOM SUPERVISOR, WAS KNOWN TO OPPOSE THE COMPLAINANT'S EFFORTS TO ORGANIZE THE RESPONDENT'S EMPLOYEES. THE COMPLAINANT UNION WAS THE BARGAINING AGENT FOR THE RESPONDENT'S MAILING ROOM EMPLOYEES AND THE MAILING ROOM EMPLOYEES HAD BEEN ENGAGED IN A STRIKE OR HAD BEEN LOCKED OUT SINCE 1964 AND HAD PICKED THE RESPONDENT'S PREMISES CONTINUOUSLY SINCE THAT TIME. LILLIE EXPRESSED HIS VIEW THAT IF THE MAILING ROOM EMPLOYEES WHO HAD BEEN HIRED TO REPLACE THE STRIKING EMPLOYEES JOINED THE COMPLAINANT UNION THEY WOULD "BE LOCKED OUT WITH THE REST OF THEM." ANOTHER ASSISTANT FOREMAN EXPRESSED A SIMILAR VIEW. OTHER MEMBERS OF MANAGEMENT APPARENTLY DID NOT RELISH THE IDEA OF THE PRESENT MAILING ROOM EMPLOYEES JOINING THE ITU.

4. MR. ROY FAVER, THE EMPLOYEE WHO COMPLAINED ABOUT THE ALLEGED THREAT AND COERCION, TESTIFIED THAT ON NOVEMBER 3RD HE HAD SEEN AN EMPLOYEE NAMED JOE G. IN THE OFFICE OF HIS SUPERIOR, LILLIE. MR. G. APPARENTLY SUFFERED AN EMOTIONAL OR MENTAL BREAKDOWN WHILE IN LILLIE'S OFFICE AND HE ATTEMPTED TO PUNCH LILLIE SEVERAL TIMES. MR. G. WAS FINALLY RESTRAINED AND COMMITTED TO A HOSPITAL FOR PSYCHIATRIC TREATMENT. IT WAS THE COMMON UNDERSTANDING AMONG THE EMPLOYEES THAT JOE G.'S BREAKDOWN WAS PRECIPITATED BY PRESSURES GENERATED AMONG THE EMPLOYEES AND STAFF BECAUSE OF THE COMPLAINANT'S EFFORTS TO ORGANIZE THE RESPONDENT'S EMPLOYEES. WHILE BOTH PARTIES ACKNOWLEDGED THAT JOE G.'S BREAKDOWN WAS PRECIPITATED BY THE PRESSURES OF THE ORGANIZING CAMPAIGN, THERE WAS NO EVIDENCE OF PROBATIVE VALUE WHICH WOULD INDICATE WHETHER JOE G. WAS OPPOSED TO OR IN FAVOUR OF THE UNION.

5. AT THE HEARING FAVER TESTIFIED THAT SHORTLY BEFORE THE JOE G. INCIDENT, AT A TIME WHEN FERGUSON AND FAVER WERE WORKING ALONE TOGETHER, FERGUSON ASKED FAVER WHETHER HE HAD SIGNED FOR THE UNION. FAVER REPLIED THAT HE HAD SIGNED. FERGUSON THEN SAID TO FAVER THAT IT WAS A GOOD THING THAT HE HAD JOINED THE UNION "BECAUSE THERE WOULD BE PRESSURES BROUGHT TO BEAR ON THOSE WHO HADN'T SIGNED." FAVER FURTHER TESTIFIED THAT DURING THESE DISCUSSIONS FERGUSON STATED THAT "IF THOSE WHO HADN'T SIGNED TRIED TO COME THROUGH THE PICKET LINES THERE MIGHT BE HEADS BUSTED."

6. FAVER DID NOT BRING THESE CONVERSATIONS TO THE ATTENTION OF ANYONE UNTIL AFTER THE JOE G. INCIDENT. SHORTLY AFTER WITNESSING JOE G.'S BREAKDOWN FAVER BECAME CONCERNED AND HE BROUGHT HIS CONVERSATIONS WITH FERGUSON TO LILLIE'S ATTENTION. LILLIE ARRANGED A MEETING THE FOLLOWING DAY WITH CHRIS DAVIES, THE RESPONDENT'S MANAGER OF INDUSTRIAL RELATIONS. AFTER DISCUSSING THE MATTER WITH DAVIES, DAVIES INVITED HIS SECRETARY TO MAKE SHORTHAND NOTES OF HIS CONVERSATIONS WITH FAVER. FAVER THEN SIGNED A TRANSCRIPT OF HER NOTES WHICH READS AS FOLLOWS:

NOTES OF A MEETING ATTENDED BY C. J. DAVIES,
PHIL LILLIE AND MR. ROY FAVER, HELD WEDNESDAY,
NOVEMBER 4, 1970 AT 11:45 A.M.

- CHRIS DAVIES: DO YOU FEEL THAT YOU ARE HERE ON A VOLUNTARY BASIS?
- ROY FAVER: YES, DEFINITELY.
- C. DAVIES: AM I OR MR. LILLIE APPLYING ANY KIND OF PRESSURE TO YOU IN HOLDING THIS DISCUSSION?
- R. FAVER: NO, NOT AT ALL.
- C. DAVIES: ROY, YESTERDAY WE HAD A MEMBER OF OUR MAILING ROOM STAFF GET INTO SUCH AN EMOTIONAL CONDITION THAT HE HAD TO BE TAKEN TO HOSPITAL, AND IN HIS EMOTIONAL STATE HE MADE STATEMENTS OF THE EFFECT THAT HE WAS VERY FEARFUL AND HAD BEEN UNDER SUCH PRESSURE FROM UNION ORGANIZATIONAL EFFORTS AND FROM OTHER MEMBERS OF THE MAIL ROOM STAFF THAT HE COULDN'T TAKE IT ANY MORE AND HE BROKE DOWN COMPLETELY. I HAVE BEEN GIVEN TO UNDERSTAND THAT SOME OF THESE PRESSURES HAVE BEEN APPLIED TO YOU. IS THIS CORRECT?
- R. FAVER: THIS IS CORRECT.
- C. DAVIES: COULD YOU TELL ME IN EXACTLY YOUR OWN WORDS WHAT KIND OF PRESSURES?
- R. FAVER: THEY TOLD ME THAT IF I DIDN'T JOIN THERE WOULD BE PRESSURE BROUGHT TO BEAR TO MAKE ME JOIN THE I.T.U.
- C. DAVIES: WOULD YOU TELL ME VERY SPECIFICALLY WHO APPLIED THIS PRESSURE TO YOU?
- R. FAVER: DAVE FERGUSON.
- C. DAVIES: COULD YOU TELL ME A LITTLE MORE SPECIFICALLY WHAT HE SAID?
- R. FAVER: HE SAID THAT EVERYBODY WAS JOINING OR HAD JOINED AND THAT THERE WAS ONLY A FEW THEY

HAD TO GET AND THAT EVERYBODY HAD TO JOIN AND THAT PRESSURE WOULD BE USED TO MAKE THEM JOIN.

C. DAVIES: DID HE IN ANY WAY INDICATE WHAT KIND OF PRESSURE?

R. FAVER: HE MADE THE STATEMENT THERE WOULD BE THE SAME KIND OF THING HAPPEN AS HAPPENED AT THE BEGINNING OF THE STRIKE.

C. DAVIES: WHAT DID YOU UNDERSTAND WOULD HAPPEN TO YOU IF YOU DID NOT SIGN THE I.T.U. MEMBERSHIP?

R. FAVER: I WOULD BE COMING THROUGH THE BACK LANE AND HAVE MY HEAD BEATEN IN, EITHER COMING TO WORK AT THE STAR OR OUT OF THE STAR.

C. DAVIES: DO YOU KNOW IF THIS KIND OF PRESSURE HAS BEEN APPLIED TO ANYONE ELSE IN THE MAIL ROOM?

R. FAVER: THERE HAS BEEN TALK OF IT TO OTHERS, BUT THE NAMES OF THE OTHERS I DON'T KNOW OFF HAND.

C. DAVIES: HAVE ANY OTHER MEMBERS OF THE STAFF SPOKEN TO YOU AND TOLD YOU THAT THEY HAD BEEN THREATENED OR PUT UNDER EXCESSIVE PRESSURE?

R. FAVER: ONLY TO THE EXTENT THAT THEY SAID THEY WOULD APPLY PRESSURE TO THOSE THAT WEREN'T IN AND WE WOULD ALL BE FORCED IN EVENTUALLY.

C. DAVIES: DO YOU HAVE ANY KNOWLEDGE OF THE INCIDENT THAT TOOK PLACE YESTERDAY?

R. FAVER: A LITTLE BIT OF KNOWLEDGE ABOUT IT.

C. DAVIES: COULD YOU TELL US WHAT YOU KNOW?

R. FAVER: HE WASN'T FEELING WELL ALL MORNING. JIM SAID THAT THEY WOULD HAVE A TALK AFTER LUNCH IN THE OFFICE. I WAS WORKING ON THE LINE AND A COMMOTION BROKE OUT IN THE OFFICE. I DIDN'T HEAR WHAT WAS GOING ON BUT COULD SEE THROUGH THE WINDOW. I OBSERVED JOE TAKING A SWING AT PHIL LILLIE.

JIM WAS TALKING TO HIM. I DON'T KNOW BUT THINK THERE WERE TWO PEOPLE PRESENT, WEBER WAS ONE. THERE WAS PUSHING AND SHOVING. HE UPSET A CHAIR. MADE SEVERAL REPEATED ATTEMPTS TO HIT LILLIE WHILE JIM TRIED TO RESTRAIN HIM. EVENTUALLY AMBULANCE CAME.

C. DAVIES: DO YOU HAVE ANY KNOWLEDGE OF WHAT BROUGHT ABOUT THIS EMOTIONAL DISTURBANCE?

R. FAVER: THERE WAS A DISCUSSION PRIOR TO GOING INTO OFFICE ABOUT UNION, AND HE WAS UNDER PRESSURE BEFORE HE WENT TO LUNCH ABOUT UNION.

C. DAVIES: HAS ANY INFORMATION REACHED YOU SINCE THE INCIDENT WHICH WOULD THROW ANY LIGHT ON THE CAUSE OF THIS INCIDENT?

R. FAVER: NOT DEFINITELY, NO.

C. DAVIES: IS THERE ANYTHING THAT YOU WOULD LIKE TO ADD TO WHAT YOU HAVE ALREADY STATED CONCERNING THE PRESSURES WHICH HAVE BEEN BROUGHT TO BEAR ON YOU IN THIS SITUATION AS IT EXISTS TODAY IN THE MAIL ROOM?

R. FAVER: YOU CAN'T WORK UNDER THIS KIND OF CONDITION EVERY DAY. COMING INTO WORK IT IS TOO MUCH WITH YOUR OWN FELLOWS INSIDE AND THE FELLOWS OUTSIDE WHEN YOUR NAME HASN'T BEEN SIGNED ON THE CARD.

C. DAVIES: HAVE YOU BEEN SUBJECT TO ANY HARASSMENT?

R. FAVER: I WAS APPROACHED YESTERDAY MORNING AND WAS ASKED IF I BELONGED TO THE I.T.U.. I SAID YES AND WAS PATTED ON THE SHOULDER AND WAS ALLOWED TO GO THROUGH.

C. DAVIES: HAS ANYTHING HAPPENED SINCE THEN?

R. FAVER: No.

C. DAVIES: WELL, THE ONLY THING I CAN ADD IS TO SHOW ON THE RECORD OF THIS MEETING THAT YOUR INFORMATION MAY BE USED BY THE COMPANY ON THE BASIS THAT YOUR NAME IS KEPT COMPLETELY

CONFIDENTIAL. DO YOU UNDERSTAND THAT THIS INFORMATION MAY BE USED BY THE COMPANY ON THIS BASIS?

R. FAVER: YES.

I HAVE READ THIS RECORD OF THE MEETING AND AGREE THAT IT IS ACCURATE.

"ROY J. FAYER"

ROY FAVER

WITNESSED:

GAIL QUINN
(MRS.) GAIL GUINN

7. DAVIES CAUSED AN INVESTIGATION TO BE MADE TO DETERMINE WHETHER THE ALLEGATIONS AGAINST FERGUSON MIGHT HAVE BEEN BASED ON MALICE. HOWEVER, THERE WAS NO EVIDENCE THAT THERE WAS ANY BAD BLOOD BETWEEN FAVER AND FERGUSON.

8. DAVIES DISCUSSED THE MATTER WITH HIS SUPERIORS AND A DECISION WAS MADE TO CONFRONT FERGUSON WITH THE ALLEGATIONS AND TO TERMINATE HIS EMPLOYMENT. IT IS CLEAR FROM THE EVIDENCE THAT THE DECISION TO DISCHARGE FERGUSON WAS MADE PRIOR TO CONFRONTING HIM WITH THE ALLEGATIONS THAT THE RESPONDENT HAD EVIDENCE THAT FERGUSON HAD INTIMIDATED AND ATTEMPTED TO COERCE AN EMPLOYEE. FERGUSON WAS NOT ADVISED OF THE IDENTITY OF HIS ACCUSER BECAUSE FAVER HAD REQUESTED THAT HIS IDENTITY NOT BE REVEALED. NO SPECIFICS WERE GIVEN TO FERGUSON CONCERNING THE NATURE OF THE ALLEGED THREATS OR COERCION. FERGUSON ADAMANTLY DENIED THE ACCUSATIONS AND DEMANDED TO KNOW THE IDENTITY OF HIS ACCUSER. BECAUSE DAVIES HAD STATED IN HIS INTERVIEW WITH FERGUSON THAT THERE ALREADY HAD BEEN ONE EMPLOYEE TAKEN TO HOSPITAL BECAUSE OF THE PRESSURES OF THE UNION DRIVE, FERGUSON ASSUMED THAT THE JOE G. INCIDENT WAS DIRECTLY CONNECTED WITH HIS DISCHARGE. THE RESPONDENT, HOWEVER, PLACED NO BLAME ON FERGUSON FOR THE JOE G. INCIDENT.

9. FERGUSON ACKNOWLEDGED THAT HE HAD ASKED FAVER WHETHER HE HAD JOINED THE UNION AND THAT FAVER HAD STATED THAT HE WAS A UNION MEMBER. FERGUSON, HOWEVER, DENIED THAT HE HAD SAID ANYTHING ABOUT PRESSURE OR BASHING OF HEADS ON THE PICKET LINE.

10. THE COMPLAINANT CALLED SEVERAL INDEPENDENT AND RESPONSIBLE WITNESSES WHO GAVE DETAILED EVIDENCE OF FERGUSON'S EXCELLENT CHARAC-

TER. THIS EVIDENCE ESTABLISHED THAT FERGUSON WAS ACTIVE IN COMMUNITY ORGANIZATIONS AND YOUTH WORK AND THAT IT WOULD BE CONTRARY TO HIS CHARACTER TO ATTEMPT TO THREATEN OR COERCE ANYONE AS ALLEGED BY THE RESPONDENT. HAVING CONSIDERED ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, WE FIND THAT FERGUSON DID NOT THREATEN OR COERCE FAVER AS ALLEGED. WE ARE OF THE VIEW THAT HAVING WITNESSED JOE G.'S BREAKDOWN, FAVER BECAME UNNERVED AND BEGAN BUILDING UPON HIS OWN MIND EVERYTHING THAT HE COULD CONSTRUE AS A THREAT TO HIS POSITION. FAVER APPARENTLY BELIEVED THAT JOE G.'S BREAKDOWN WAS CAUSED BY PRESSURE GENERATED BY THE UNION SUPPORTERS AND HE WAS VERY CONCERNED ABOUT BEING SUBJECTED TO PRESSURE OF THAT NATURE. EVEN IF WE ACCEPT FAVER'S VERSION OF THE CONVERSATION BETWEEN FERGUSON AND HIMSELF, THERE WAS OBVIOUSLY NO THREAT MADE TO FAVER BY FERGUSON. FERGUSON BELIEVED FAVER TO BE A UNION MEMBER AND ACCORDINGLY THERE WAS NO PURPOSE TO BE SERVED BY THREATENING HIM EVEN IF FERGUSON WAS PRONE TO DO SO. WHILE FERGUSON MAY HAVE STATED AN OPINION AS TO WHAT MIGHT HAPPEN ON THE PICKET LINE, THIS WAS NOT STATED IN THE NATURE OF A THREAT AGAINST FAVER BUT WAS SIMPLY A STATEMENT OF WHAT FERGUSON MIGHT HAVE ANTICIPATED WOULD HAPPEN. HOWEVER, BECAUSE FAVER WAS UPSET BY THE JOE G. INCIDENT WE ARE OF THE VIEW THAT FAVER EMBELLISHED FERGUSON'S WORDS IN HIS OWN MIND AND READ SOMETHING INTO THOSE WORDS WHICH WAS NOT THERE AND CERTAINLY WAS NOT INTENDED BY FERGUSON.

11. FAVER'S TESTIMONY AS TO WHAT TRANSPIRED BETWEEN HIM AND FERGUSON IS NOT CONSISTENT WITH THE STATEMENT THAT APPEARS IN THE TRANSCRIPT CITED ABOVE. IT IS READILY APPARENT THAT FAVER READ MORE INTO FERGUSON'S REMARKS FOR THE PURPOSE OF MAKING THE STATEMENT TO DAVIES THAN WAS ACTUALLY SAID BY FERGUSON, EVEN IF WE ARE TO ACCEPT FAVER'S VERSION OF THE CONVERSATION. WE ARE OF THE VIEW THAT DAVIES FAILED TO MAKE A PROPER INVESTIGATION OF THE EVENT COMPLAINED OF. IT IS NOTED THAT DAVIES DID NOT ASK FAVER WHERE OR WHEN THE EVENT TOOK PLACE. IT IS ALSO NOTED THAT DAVIES FAILED TO HAVE FAVER RELATE THE EXACT WORDS USED BY FERGUSON. HAD FAVER BEEN ASKED TO REPEAT THE EXACT WORDS FERGUSON USED, IT WOULD HAVE PUT THE MATTER IN A COMPLETELY DIFFERENT LIGHT AND IT IS UNLIKELY THAT FERGUSON WOULD HAVE BEEN DISCHARGED FOR THREATENING OR ATTEMPTING TO COERCE FAVER. IT WOULD APPEAR THAT JUST AS FAVER WAS EMOTIONALLY UPSET BY THE JOE G. INCIDENT, OTHERS WERE SIMILARLY AFFECTED. AFTER THE PRELIMINARY QUESTIONS ASKED BY DAVIES DURING HIS INTERVIEW WITH FAVER ON NOVEMBER 4TH, DAVIES PREFACED THE INTERVIEW BY RELATING THE JOE G. INCIDENT. IT IS OBVIOUS THAT THIS INCIDENT WAS FOREMOST IN THE MINDS OF EVERYONE AT THAT MEETING AND THAT EVERYTHING THAT TRANSPIRED AT THE MEETING WAS COLOURED BY THE EFFECT THE JOE G. INCIDENT HAD ON THEM. IF THIS BOARD HAD JURISDICTION TO DETERMINE WHETHER OR NOT THE DISCHARGE OF FERGUSON WAS FOR PROPER CAUSE, WE WOULD HAVE NO HESITATION IN FINDING THAT IT WAS NOT AND WE WOULD ACCORDINGLY

DIRECT THAT FERGUSON BE REINSTATED. HOWEVER, IT IS NOT OUR FUNCTION TO DETERMINE WHETHER THE DISCHARGE WAS FOR PROPER CAUSE. OUR JURISDICTION IN THIS MATTER IS TO DETERMINE WHETHER THE RESPONDENT REFUSED TO CONTINUE TO EMPLOY FERGUSON BECAUSE HE WAS A MEMBER OF THE COMPLAINANT UNION OR WAS EXERCISING ANY OTHER RIGHTS UNDER THE LABOUR RELATIONS ACT, CONTRARY TO SECTION 58(A) OF THE ACT.

12. AS STATED ABOVE, WHAT WAS UPPERMOST IN THE MINDS OF THE RESPONDENT'S OFFICIALS WAS THE JOE G. INCIDENT WHICH THEY UNDERSTOOD TO HAVE BEEN PRECIPITATED BY PRESSURES GENERATED DURING THE COMPLAINANT'S ORGANIZING CAMPAIGN. WHILE IT MAY BE THAT SOME OF THE RESPONDENT'S OFFICIALS MIGHT HAVE CONTRIBUTED TO THIS PRESSURE AS MUCH AS THE COMPLAINANT'S SUPPORTERS, THE RESPONDENT'S CONCERN WAS DIRECTED TO PREVENTING EMPLOYEES FROM SUCCUMBING TO THESE PRESSURES IN THE SAME MANNER AS JOE G. HAD. WHILE IT IS NOT THE FUNCTION OF AN EMPLOYER TO DETERMINE WHO SUPPORTS OR OPPOSES A UNION, SINCE THAT MATTER IS NOT THE PROPER CONCERN OF THE EMPLOYER, HOWEVER, THE EMPLOYER HAS THE RIGHT, IF NOT THE OBLIGATION, TO PROTECT THE FREEDOM OF CHOICE OF EMPLOYEES WITH RESPECT TO UNION MEMBERSHIP. THE LABOUR RELATIONS ACT DOES NOT CONTEMPLATE THAT AN EMPLOYER SHOULD INTERFERE WITH THE EMPLOYEES' CHOICE CONCERNING UNION REPRESENTATION AND ACCORDINGLY EMPLOYERS SHOULD STRIVE TO MAINTAIN A NEUTRAL POSITION AND ENDEAVOUR TO PRESERVE A CLIMATE WHEREIN THE EMPLOYEES CAN MAKE THEIR DECISIONS INDEPENDENTLY AND FREE FROM IMPROPER OR IRREGULAR ACTIVITIES SUCH AS THREATS, COERCION, INTIMIDATION OR UNDUE INFLUENCE. IF SUCH IMPROPER OR IRREGULAR ACTIVITIES EXIST, THE EMPLOYER HAS NOT ONLY THE RIGHT BUT THE DUTY TO BRING SUCH ACTIVITIES TO AN END.

13. ON THE EVIDENCE BEFORE US, WE FIND THAT THE RESPONDENT IN THIS CASE ATTEMPTED TO PUT AN END TO THE ALLEGED THREATENING OR COERCIVE ACTIVITIES OF FERGUSON. THE FACT THAT THESE ACTIVITIES DID NOT TAKE PLACE DOES NOT, IN ITSELF, MAKE THE RESPONDENT'S DISCHARGE OF FERGUSON CONTRARY TO THE ACT. WE ARE OF THE VIEW THAT DAVIES SINCERELY BELIEVED THAT FERGUSON HAD ENGAGED IN THREATENING OR COERCIVE ACTIVITIES WITH RESPECT TO FAVER. HOWEVER, HAD DAVIES MADE A FULL INQUIRY HE WOULD HAVE BECOME DISABUSED OF THIS BELIEF. THE FACT THAT HE DID NOT MAKE THESE INQUIRIES IS NOT EVIDENCE OF BAD FAITH ON HIS PART BUT IN OUR VIEW IS EVIDENCE OF THE FACT THAT HE TOO WAS EMOTIONALLY UPSET BY THE JOE G. INCIDENT AND THIS WAS AGGRAVATED BY FAVER'S COMPLAINT. WHILE IT IS TRUE THAT DAVIES ACTED PRECIPITOUSLY IN EFFECTING THE DISCHARGE IN THE MANNER IN WHICH HE DID AND WHILE SUCH DISCHARGE WAS UNFAIR AND UNJUST, THERE IS NOTHING CONTRARY TO SECTION 58(A) OF THE ACT WITH RESPECT TO THE DISCHARGE. WE ACCEPT THE FACT THAT DAVIES WAS MOTIVATED SOLELY BY THE DESIRE TO PUT AN END TO WHAT HE BELIEVED TO BE THREATS OR COERCION. IF DAVIES HAD ACTED SO INJUDICIOUSLY IN THE MANNER IN WHICH HE MADE THE INQUIRIES IN A SITUATION WHICH WAS NOT AGGRAVATED BY THE JOE G. INCIDENT, HIS GOOD FAITH WOULD BE CAST

IN DOUBT. HOWEVER, THE JOE G. INCIDENT IN EFFECT PANICKED DAVIES INTO MAKING THE PRECIPITOUS DECISION.

14. IT IS NOTED THAT MR. BURNETT THALL, A VICE-PRESIDENT OF THE RESPONDENT, STATED THAT HE WAS INVOLVED IN THE DECISION TO DISCHARGE FERGUSON AND THAT HE ACTED ON THE INFORMATION THEN BEFORE HIM. THALL WENT ON TO SAY THAT IF THE INFORMATION ACTED UPON BY THE RESPONDENT PROVED TO BE FALSE, THE RESPONDENT WOULD REMEDY THE SITUATION. IT NOW APPEARS THAT FAVER'S COMPLAINT ABOUT FERGUSON WAS INACCURATE AND THAT ACCORDINGLY FERGUSON WAS UNJUSTLY DISCHARGED.

15. DEALING NEXT WITH THE COMPLAINANT'S REQUEST THAT THE BOARD ISSUE A CEASE AND DESIST ORDER, IT IS NOTED THAT THERE MAY HAVE BEEN A TECHNICAL BREACH OF THE ACT BY SOME OF THE RESPONDENT'S OFFICIALS BECAUSE OF CERTAIN STATEMENTS THEY MADE. WHILE IT WOULD NOT BE ADVISABLE FOR THE OFFICIALS TO CONTINUE TO MAKE SIMILAR STATEMENTS IN VIEW OF WHAT HAS NOW TRANSPIRED, HOWEVER WHEN THESE STATEMENTS ARE CONSIDERED IN THE CONTEXT IN WHICH THEY WERE MADE AT THE TIME, THE STATEMENTS WERE, IN OUR VIEW, OF A NATURE THAT WOULD NOT INTIMIDATE, COERCE, THREATEN OR UNDULY INFLUENCE THE AVERAGE EMPLOYEE. THE BOARD, IN ITS DISCRETION, DOES NOT DEEM IT ADVISABLE TO ISSUE A CEASE AND DESIST ORDER, SINCE TO DO SO WOULD ONLY ENHANCE AND ADD MEANING TO THE STATEMENTS COMPLAINED OF, A MEANING WHICH WAS NOT INTENDED BY THE RESPONDENT'S OFFICIALS. IN VIEW OF THE RESPONDENT'S EXPERIENCE WITH THE ITU DURING THE LONG STRIKE OR LOCK-OUT THAT HAS OCCURRED, IT WOULD BE CONTRARY TO REASON TO ANTICIPATE THAT THE RESPONDENT AND ITS OFFICIALS WOULD BE NEUTRAL IN THEIR VIEWS CONCERNING THE COMPLAINANT'S EFFORTS TO ORGANIZE THE EMPLOYEES WHO WERE PICKETING THE RESPONDENT'S PREMISES. AT THE PRESENT TIME, THE RESPONDENT HAS AN ACTIVE COLLECTIVE BARGAINING RELATIONSHIP WITH APPROXIMATELY TEN UNIONS. WHILE THE RESPONDENT MAY ENGAGE IN HARD BARGAINING WITH THESE OTHER UNIONS, IT CANNOT BE SAID THAT THE RESPONDENT HAS AN ANTI-UNION POLICY. APPARENTLY, DISCUSSIONS WERE GOING ON ON THE RESPONDENT'S PREMISES BOTH FOR AND AGAINST THE COMPLAINANT'S ORGANIZING CAMPAIGN AND UNFORTUNATELY IT WOULD APPEAR THAT SOME MEMBERS OF MANAGEMENT PARTICIPATED IN THESE DISCUSSIONS AND EXPRESSED THEIR VIEWS. HOWEVER THAT MAY BE, WE ARE NOT SATISFIED ON THE EVIDENCE THAT THE VIEWS EXPRESSED BY MEMBERS OF MANAGEMENT COULD PROPERLY BE CONSTRUED AS BEING THREATS, COERCION OR UNDUE INFLUENCE WHICH WOULD JUSTIFY A CEASE AND DESIST ORDER. THALL TESTIFIED THAT IT WAS THE POLICY OF THE RESPONDENT NOT TO INTERFERE, HOWEVER WHILE PERSONAL OBSERVATIONS MIGHT HAVE BEEN EXPRESSED BY SOME OF THE RESPONDENT'S OFFICIALS, THESE OBSERVATIONS WERE OF SUCH A NATURE THAT THEY WERE READILY RECOGNIZED AS PERSONAL OBSERVATIONS RATHER THAN AN EXPRESSION OF COMPANY POLICY. ALTHOUGH SUCH OBSERVATIONS SHOULD NOT BE ENCOURAGED, WE ARE OF THE VIEW THAT IN THE EXERCISE OF ITS DISCRETION AND FOR THE REASONS SET OUT ABOVE, THE BOARD SHOULD NOT MAKE A CEASE AND DESIST ORDER WITH RESPECT TO THESE MATTERS AT THIS TIME.

16. THE COMPLAINTS IN THIS MATTER ARE THEREFORE DISMISSED.

DECISION OF BOARD MEMBER O. HODGES: SEPTEMBER 15, 1971.

1. THE TESTIMONY OF DAVID DONALD FERGUSON ON 31 MARCH 1971 VERY CLEARLY ESTABLISHES ONLY MINIMAL UNION ACTIVITY. HE KNEW ABOUT THE UNION ORGANIZING DRIVE FOR ABOUT SIX MONTHS BEFORE HE ACCEPTED MEMBERSHIP IN OCTOBER 1970 AND THEN HE WAS SIGNED UP BY A PERSON WHO WAS NOT AN EMPLOYEE OF THE STAR. HE WAS NEVER BEFORE AN I.T.U. MEMBER, NEVER ATTENDED A LOCAL 5 UNION MEETING, NEVER ASKED TO HELP SIGN UP CARDS OR ENGAGE IN OTHER UNION ACTIVITY, AND WAS NEVER GIVEN LITERATURE TO DISTRIBUTE. HIS PARTICIPATION WAS LIMITED TO HIS OWN MEMBERSHIP.

2. FERGUSON TESTIFIED THAT ON 6 NOVEMBER 1970 AT 11:00 A.M. HE WAS TAKEN OFF HIS REGULAR JOB BY THE ASSISTANT SUPERVISOR IN THE MAILING ROOM AND INSTRUCTED TO GO TO THE MAILING ROOM OFFICE. OTHER MANAGEMENT OFFICIALS WERE PRESENT AND ACCOMPANIED HIM TO THAT MANAGEMENT OFFICE. FROM THAT POINT HE WAS TAKEN TO THE 9TH FLOOR OFFICE OF THE INDUSTRIAL RELATIONS MANAGER, C.J. (CHRIS) DAVIES. IN ADDITION TO DAVIES, THE SUPERVISOR AND ASSISTANT SUPERVISOR, THERE WERE SHOP GRIEVANCE MEN PRESENT. HE FURTHER TESTIFIED: "DAVIES SAID 'SIT DOWN' AND THEN READ A CHARGE STATING THAT I WAS FIRED FOR INTIMIDATING EMPLOYEES. I DENIED IT. DAVIES SAID 'WE HAVE WITNESSES.' I SAID IT'S A KANGAROO COURT, BRING YOUR WITNESSES. HE REFUSED ON THE GROUND IT WOULD JEOPARDIZE JOBS TO DO SO. I WAS SHOCKED. I HAD NO IDEA WHO I WAS TO HAVE INTIMIDATED. THE MEETING TOOK 10 MINUTES. HE CALLED A SECURITY OFFICER TO ESCORT ME TO MY LOCKER. AS WE LEFT DAVIES TOLD ME NEVER TO SET FOOT IN THE STAR AGAIN." THE GRIEVANCE MEN, SHOP REPRESENTATIVES SINCE THE PERIOD OF THE STRIKE, WERE NOT GIVEN A CHANCE TO SPEAK. FERGUSON OFFERED NO RESISTANCE AND LEFT THE BUILDING AFTER CLEANING OUT HIS LOCKER, TEN OR FIFTEEN MINUTES LATER. FERGUSON SAID HE WANTED TO GO BACK TO WORK AT THE STAR.

3. FERGUSON TESTIFIED THAT HE COACHED HOCKEY AND SOFT BALL IN NORTH YORK AND THAT, AS A CO-FOUNDER, HE ORGANIZED AND CHARTERED THE WILLOWDALE COMMUNITY CLUB. CHARACTER WITNESSES CALLED TO TESTIFY SAID FERGUSON WAS KNOWN FOR HIS DEVOTION TO BOYS' WORK AND FOR HIS CONTRIBUTION TO CRIPPLED CHILDREN'S CLUBS. HE WAS KNOWN AS A GOOD SOLID AND PUBLIC SPIRITED CITIZEN IN THE COMMUNITY. THIS TESTIMONY WAS GIVEN BY A RETIRED ACCOUNTANT AND COMPANY PRESIDENT AND BY A LAWYER WHO HAD BEEN AN ALDERMAN IN NORTH YORK. ONE MAN HAD KNOWN FERGUSON FOR 17 YEARS, THE OTHER FOR FIVE YEARS.

4. ON FERGUSON'S OWN EVIDENCE THE BOARD IS ESTOPPED FROM FINDING THAT HE WAS DISCHARGED FOR UNION ACTIVITY; IN THIS I CONCUR WITH THE FINDING OF MY COLLEAGUES. I WOULD REINSTATE FERGUSON IN HIS FOR-

HER EMPLOYMENT WITH FULL COMPENSATION AND ACCRUED BENEFITS HAD I THAT AUTHORITY UNDER THE LABOUR RELATIONS ACT, FOR HE IS THE VICTIM OF THE MOST SHOCKING INJUSTICE.

5. I DO NOT AGREE WITH THE MAJORITY IN THE MATTER OF THE CEASE AND DESIST ORDER SOUGHT BY THE COMPLAINANT UNION AGAINST THE STAR. ON CAREFUL CONSIDERATION OF ALL OF THE EVIDENCE, I DOUBT THAT ANYTHING LESS THAN A BOARD ORDER WOULD IMPRESS SOME OF THE MANAGEMENT UNDERLINGS WITH THE FACT THAT UNION ORGANIZATION IS LAWFUL AND MUST BE ALLOWED TO PROCEED WITHOUT INTIMIDATION AND VEILED THREATS OF REPRISAL. ACCORDINGLY, I FIND THAT A CEASE AND DESIST ORDER SHOULD ISSUE AS REQUESTED BY THE COMPLAINANT UNION.

328-71-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION LOCAL NO. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. R. T. CONSTRUCTION (RESPONDENT) V. LOCAL UNION 494 UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (INTERVENER).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND E. BOYER.

APPEARANCES AT THE HEARING: EDWARD VANDERKLOET AND C. JOHN VANDERLAAN FOR THE APPLICANT, NO ONE FOR THE RESPONDENT, T. E. ARMSTRONG, I. LOGAN AND R. CAVANAUGH FOR THE INTERVENER.

DECISION OF THE BOARD: SEPTEMBER 17, 1971.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE INTERVENER ALLEGED THAT THE APPLICATION WAS UNTIMELY IN VIEW OF THE AGREEMENT BETWEEN THE INTERVENER AND THE RESPONDENT WHICH IS REFERRED TO BELOW.

2. THE INTERVENER WAS A PARTY TO A COLLECTIVE AGREEMENT BETWEEN THE WINDSOR CONSTRUCTION ASSOCIATION, THE GREATER WINDSOR HOME BUILDERS ASSOCIATION AND OTHER INDIVIDUALS. THIS AGREEMENT WAS DATED JULY 26, 1969 AND WAS TO REMAIN IN FORCE AND EFFECT UNTIL APRIL 30, 1971. THE RESPONDENT WAS NOT A PARTY TO OR COVERED BY THE COLLECTIVE AGREEMENT AT THE TIME IT WAS ENTERED INTO.

3. IN SEPTEMBER 1970, THE INTERVENER CAUSED THE RESPONDENT TO SIGN A DOCUMENT IN THE FOLLOWING FORM:

THE UNDERSIGNED, HEREBY ACKNOWLEDGE AND AGREE THAT THE FOREGOING AGREEMENT AND SCHEDULES BETWEEN THE WINDSOR CONSTRUCTION ASSOCIATION, THE GREATER WINDSOR HOME BUILDERS ASSOCIATION

AND THE UNION THEREIN NAMED SHALL BE BINDING UPON THE UNDERSIGNED FROM AND AFTER THE DATE OF EXECUTION HEREOF, IN THE SAME MANNER AND TO THE SAME EXTENT AS IF THE UNDERSIGNED HAD BEEN ORIGINALLY PARTIES THERETO AND HAD HEREIN EXPRESSLY SET FORTH ALL OF THE TERMS OF THE SAID AGREEMENT AND SCHEDULES, IN THE PRECEDING PAGES.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE HEREUNTO AFFIXED THEIR HANDS AND SEALS THIS
 _____ DAY OF _____ 19____.

"R T CONSTRUCTION"	}	_____
"ROLAND TESSIER"		_____
"464 KARL P1"		_____
"256-6568"		

WITNESS)
)

THIS DOCUMENT WAS ATTACHED TO THE COLLECTIVE AGREEMENT REFERRED TO ABOVE AND APPEARS IMMEDIATELY FOLLOWING ONE OF THE SCHEDULES ON THE COLLECTIVE AGREEMENT WHICH WAS SIGNED BY THE INTERVENER. THE DOCUMENT SIGNED BY THE RESPONDENT WAS NOT DATED AND THE INTERVENER DID NOT SIGN THE DOCUMENT. THE INTERVENER TOOK THE POSITION THAT THIS DOCUMENT READ TOGETHER WITH THE MASTER AGREEMENT REFERRED TO ABOVE CONSTITUTED A COLLECTIVE AGREEMENT BETWEEN THE INTERVENER AND THE RESPONDENT, WHICH WOULD CONTINUE IN EFFECT FOR ONE YEAR FROM THE DATE IT WAS SIGNED PURSUANT TO THE PROVISIONS OF SECTION 44(1) (FORMERLY SECTION 39(1)) OF THE LABOUR RELATIONS ACT.

4. IT IS APPARENT FROM THE FACE OF THE DOCUMENT SIGNED BY THE RESPONDENT THAT THE DOCUMENT IS BOTH UNDATED AND UNSIGNED BY THE INTERVENER, ALTHOUGH THESE REQUIREMENTS ARE CONTEMPLATED BY THE DOCUMENT ITSELF. WHILE THE INTERVENER TOOK THE POSITION THAT THE DOCUMENT WAS AN AGREEMENT BETWEEN THE INTERVENER AND THE RESPONDENT TO BE BOUND BY A COLLECTIVE AGREEMENT SIMILAR IN TERMS WITH THE WINDSOR CONSTRUCTION ASSOCIATION, THE GREATER WINDSOR HOME BUILDERS ASSOCIATION AGREEMENT, WE MUST FIND THAT THE INTERVENER FAILED TO ESTABLISH THAT SUCH AN AGREEMENT HAD BEEN ENTERED INTO WITH THE RESPONDENT. BEFORE A DOCUMENT CAN BE CLASSIFIED AS AN AGREEMENT, TWO PARTIES

MUST BE BOUND BY THE "AGREEMENT". THE DOCUMENT UPON WHICH THE INTERVENER RELIES ONLY BEARS THE SIGNATURE OF ONE PARTY. ACCORDINGLY, THE DOCUMENT STANDING ALONE DOES NOT CONSTITUTE AN AGREEMENT WITH ANYONE. ONE PARTY CANNOT UNILATERALLY AGREE TO BE BOUND BY A COLLECTIVE AGREEMENT BETWEEN OTHER PARTIES BEFORE THERE CAN BE SAID TO BE A COLLECTIVE AGREEMENT BETWEEN A RESPONDENT IN THE SAME TERMS AND CONDITIONS AS IS SET OUT IN THE MASTER AGREEMENT. IT MUST BE ESTABLISHED THAT THE UNION AND THE EMPLOYER BOTH AGREE TO BE BOUND BY SUCH AGREEMENT.

5. FOR THE REASONS SET OUT IN THE MARSLAND ENGINEERING LIMITED CASE, OLRB MONTHLY REPORT, APRIL 1970, P. 133, AND THE PEACE RIVER MINING & SMELTING LTD. CASE, OLRB MONTHLY REPORT, JULY 1970, P. 505, WE FIND THAT SINCE THE INTERVENER FAILED TO ENTER INTO A WRITTEN AGREEMENT WITH THE RESPONDENT BY SIGNING THE DOCUMENT REFERRED TO ABOVE THAT THIS DOCUMENT DOES NOT CONSTITUTE A COLLECTIVE AGREEMENT EVEN WHEN READ WITH THE MASTER AGREEMENT WHICH WAS SIGNED BY THE INTERVENER WITH OTHER PARTIES. TO HOLD OTHERWISE WE WOULD HAVE TO FIND THAT ANY EMPLOYER CAN SIMPLY SIGN A DOCUMENT SIMILAR TO THAT QUOTED ABOVE AND AFFIX IT TO A SIGNED COPY OF A COLLECTIVE AGREEMENT AND THEREBY BECOME A PARTY TO THAT AGREEMENT.

6. IN VIEW OF OUR FINDING THAT THE DOCUMENT RELIED UPON BY THE INTERVENER DOES NOT CONSTITUTE A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(E) (FORMERLY SECTION 1(1)(C)) OF THE LABOUR RELATIONS ACT, IT IS UNNECESSARY FOR US TO MAKE A DEFINITIVE DETERMINATION WITH RESPECT TO THE REQUIREMENT THAT A COLLECTIVE AGREEMENT MUST BE DATED. HOWEVER, IT SHOULD BE NOTED THAT WE ARE PRESENTLY OF THE VIEW THAT A COLLECTIVE AGREEMENT MUST BE FOR AT LEAST ONE YEAR (SEE SECTION 44 (FORMERLY SECTION 39) OF THE LABOUR RELATIONS ACT). WHERE AN AGREEMENT IS UNDATED, IT IS IMPOSSIBLE TO APPLY THE PROVISIONS OF SECTION 44(1) OF THE ACT SINCE IT IS IMPOSSIBLE TO DETERMINE THE DATE THAT THE AGREEMENT COMMENCED TO OPERATE AS REQUIRED BY SECTION 44(1). IT IS INSUFFICIENT TO CALL VIVA VOCE EVIDENCE WITH RESPECT TO THE DATE THAT THE AGREEMENT WAS ENTERED INTO SINCE PERSONS WHO ARE NOT PARTY TO THE AGREEMENT HAVE A RIGHT TO ASCERTAIN THE DURATION OF THE AGREEMENT FROM THE INFORMATION CONTAINED ON THE FACE OF THE AGREEMENT.

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10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

584-71-R: MELDRUM R. GAREAU AND EARL H. DICKSON (APPLICANTS) V. THE REPRESENTATIVES' AND TECHNICAL STAFF UNION (RESPONDENT).

(RE: CIVIL SERVICE ASSOCIATION OF ONT. (INC.)).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: MELDRUM R. GAREAU AND EARL H. DICKSON FOR THE APPLICANTS, HENRY M. POLLIT AND BEN COFFEY FOR THE RESPONDENT, D.J.M. BROWN FOR THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.).

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER O. HODGES: SEPTEMBER 20, 1971.

1. THIS IS AN APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT. THE RESPONDENT CHALLENGED THE TIMELINESS OF THIS APPLICATION ON THE GROUNDS THAT THE RESPONDENT AND THE EMPLOYER HAD RENEWED THE COLLECTIVE AGREEMENT BETWEEN THEM AFTER THE PREVIOUS COLLECTIVE AGREEMENT HAD EXPIRED BUT PRIOR TO THE MAKING OF THE INSTANT APPLICATION WHICH WAS MADE ON JUNE 16, 1971.
2. TO ESTABLISH ITS CHALLENGE, THE RESPONDENT RELIED ON THE FACT THAT THE NEGOTIATING COMMITTEES FOR THE UNION AND THE EMPLOYER HAD NEGOTIATED AND SIGNED A MEMORANDUM OF AGREEMENT ON APRIL 15, 1971 WHICH WAS SUBJECT TO RATIFICATION BY THE PARTIES. ON APRIL 16, 1971 THE RESPONDENT NOTIFIED THE EMPLOYER THAT THE SETTLEMENT THAT HAD BEEN NEGOTIATED BY THE BARGAINING COMMITTEES WAS RATIFIED BY THE RESPONDENT UNION. WHILE IT IS CLEAR FROM THE EVIDENCE THAT THE EMPLOYER INTENDED TO APPLY THE TERMS AND CONDITIONS OF THE MEMORANDUM OF AGREEMENT, THE EMPLOYER FAILED TO ADVISE THE RESPONDENT IN WRITING THAT IT HAD RATIFIED THE SETTLEMENT.
3. THE MEMORANDUM OF AGREEMENT IN THIS CASE MAY BE CHARACTERIZED AS AN AGREEMENT TO ENTER INTO A COLLECTIVE AGREEMENT IF BOTH PARTIES RATIFIED THE SETTLEMENT THAT HAD BEEN NEGOTIATED BY THE BARGAINING COMMITTEES. IN ORDER TO CONSTITUTE A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(E) (FORMERLY SECTION 1(1)(C)) OF THE ACT, BOTH PARTIES MUST AGREE IN WRITING TO RATIFY THE SETTLEMENT. SINCE ONE OF THE PARTIES FAILED TO NOTIFY THE OTHER PARTY IN WRITING THAT THE SETTLEMENT WAS RATIFIED AND FOR THE REASONS GIVEN BY THE BOARD IN THE MARSLAND ENGINEERING LIMITED CASE, OLRB MONTHLY REPORT, APRIL 1970, P. 133, THE BOARD FINDS THAT THE RESPONDENT AND THE EMPLOYER FAILED TO ENTER INTO A NEW COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(E) OF THE ACT AS ALLEGED BY THE RESPONDENT. THE BOARD ACCORDINGLY FINDS THAT THIS APPLICATION IS TIMELY WITHIN THE PROVISIONS OF SECTION 53 (FORMERLY SECTION 46) OF THE ACT.

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DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: SEPTEMBER 20, 1971.

I DISSENT FROM THAT PORTION OF THE MAJORITY DECISION DEALING WITH THE AGREEMENT BETWEEN THE EMPLOYER AND THE RESPONDENT UNION.

IN MY RESPECTFUL OPINION, THE AGREEMENT MAY VERY WELL HAVE BEEN A COLLECTIVE AGREEMENT WITHIN THE MEANING OF THE LABOUR RELATIONS ACT SO LONG AS SUCH AGREEMENT WAS RATIFIED BY THE RESPECTIVE PARTIES, WHETHER OR NOT SUCH RATIFICATION WAS IN WRITING.

I AM OF THE OPINION THAT THE QUESTION OF RATIFICATION IS AN EVIDENTIARY PROBLEM WHICH MAY, IN MANY CIRCUMSTANCES, BE PROVEN IN OTHER WAYS THAN WRITTEN NOTIFICATION TO THE OTHER PARTY.

674-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA - LOCAL 527 (APPLICANT) v. MURRAY R. GRAY LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

DECISION OF THE BOARD: SEPTEMBER 22, 1971.

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6. THE APPLICANT AND THE RESPONDENT HAVE CLAIMED THAT THE UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING OUGHT TO BE DEFINED WITH REFERENCE TO "CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT AS A UTILITY CONTRACTOR". THE APPLICANT AND THE RESPONDENT HAVE NOT ADVANCED ANY REASON FOR DEFINING THE UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING IN TERMS OF A SPECIFIC TYPE OF WORK. IT HAS NOT BEEN AND IS NOT PRESENTLY THE PRACTICE OF THE BOARD IN APPLICATIONS FOR CERTIFICATION FILED UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT TO DEFINE A UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING IN THE RESTRICTIVE TERMS CLAIMED BY THE APPLICANT AND THE RESPONDENT AND REFERRED TO ABOVE. IN THE CIRCUMSTANCES OF THIS APPLICATION, THE BOARD SEES NO REASON TO DEPART FROM ITS USUAL PRACTICE OF NOT RESTRICTING A BARGAINING UNIT IN THE TERMS CLAIMED BY THE APPLICANT AND THE RESPONDENT.

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11. IN A LETTER TO THE BOARD ACCOMPANYING THE STATEMENT OF DESIRE, THE REPRESENTATIVE OF THE GROUP OF OBJECTING EMPLOYEES STATED:

"TO WHOM IT MAY CONCERN

REGARDING MURRAY R. GRAY EMPLOYEE'S (SIC) AND THE LABOURER'S (SIC) INTERNATIONAL UNION OF NORTH AMERICA LOCAL 527, THE RESULTS OF MY INVESTIGATION ARE AS FOLLOWS:

I FOUND OUT THAT 75% OF ALL SIGNATURES FOR THE ABOVE-NAMED UNION WERE EITHER PUSHED OR FORCED UNWILLINGLY TO SIGN, WITHOUT PROPER KNOWLEDGE OF WHAT WOULD HAPPEN."

12. THE STATEMENTS MADE BY THE REPRESENTATIVE OF THE GROUP OF OBJECTING EMPLOYEES APPEAR TO CONTAIN UNSPECIFIC ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT. HOWEVER, THESE ALLEGATIONS ARE FUNDAMENTALLY DEFICIENT IN THAT THEY ARE MADE AT LARGE WITHOUT REFERENCE TO THE IDENTITY OF THE PARTY ALLEGEDLY INVOLVED. THESE ALLEGATIONS DO NOT INDICATE WHETHER THE ALLEGED PERFORMER OF THE ALLEGED IMPROPER CONDUCT IS THE APPLICANT, THE RESPONDENT, ONE OR MORE OF THE EMPLOYEES OR A PARTY NOT PRESENTLY BEFORE THE BOARD IN THIS PROCEEDING. THE FUNDAMENTAL DEFICIENCY OF THESE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT IS COMPOUNDED BY A COMPLETE LACK OF DETAILS CONCERNING EITHER THE TIME AND PLACE WHERE THIS ALLEGED CONDUCT OCCURRED OR THE NAME OR NAMES OF THE PERSON OR PERSONS WHO ALLEGEDLY ENGAGED IN THIS ALLEGED IMPROPER OR IRREGULAR CONDUCT. IN THE CIRCUMSTANCES OF THIS APPLICATION, THE BOARD WILL NOT INQUIRE FURTHER INTO THE UNSPECIFIC ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT MADE BY THE REPRESENTATIVE OF THE GROUP OF OBJECTING EMPLOYEES.

13. IN PARAGRAPH 13 OF ITS REPLY THE RESPONDENT STATED:

"THE RESPONDENT'S EMPLOYEES HAVE BEEN CONTINUALLY HARASSED DURING WORKING HOURS ON THE VARIOUS JOBS BY AGENTS AND REPRESENTATIVES OF THE APPLICANT AND SUCH ACTIONS HAVE CAUSED CONSIDERABLE LOSS TO THE RESPONDENT AND CAUSED CONSIDERABLE DELAY IN COMPLETION OF THE RESPONDENT'S CONTRACTS. IT WAS NECESSARY IN ONE INSTANCE TO SECURE THE SERVICES OF THE TOWNSHIPS OF NEPEAN POLICE DEPARTMENT TO PREVENT THE APPLICANT'S AGENTS AND SERVANTS FROM INTERFERING WITH THE COMPLETION OF ONE OF THE RESPONDENT'S CONTRACTS."

14. THE BOARD NOTES THAT WHILE THE STATEMENTS CONTAINED IN PARAGRAPH 13 OF THE RESPONDENT'S REPLY ARE MADE WITH REFERENCE TO THE APPLICANT, THEY DO NOT REFER TO EITHER THE TIME AND PLACE WHERE THIS

ALLEGED CONDUCT OCCURRED OR THE NAME OR NAMES OF THE PERSON OR PERSONS WHO ALLEGEDLY COMMITTED THEM. IN ADDITION, THE RESPONDENT HAS NOT ALLEGED WHICH SECTION OR SECTIONS OF THE LABOUR RELATIONS ACT HAVE BEEN VIOLATED BY THE ALLEGED CONDUCT REFERRED TO IN PARAGRAPH 13 OF THE RESPONDENT'S REPLY. IN THE CIRCUMSTANCES OF THIS APPLICATION THE BOARD WILL NOT INQUIRE FURTHER INTO THE ALLEGATIONS MADE BY THE RESPONDENT IN PARAGRAPH 13 OF ITS REPLY.

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473-71-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. MACLEODS, A DIVISION OF MACLEOD STEDMAN LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: CLIFFORD EVANS FOR THE APPLICANT, BENJAMIN LAMB, Q.C., J. D. GRANT, H. J. SEDDON AND MURIEL LINDQUIST FOR THE RESPONDENT, NO ONE FOR THE OBJECTORS.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER D. B. ARCHER: SEPTEMBER 23, 1971.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) (FORMERLY SECTION (1)(1)(J) OF THE LABOUR RELATIONS ACT.
2. THE APPLICANT APPLIED ON MAY 25, 1971 TO BE CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT.
3. THE RESPONDENT WAS ADVISED BY THE BOARD BY A LETTER DATED JUNE 8, 1971 THAT FOUR EMPLOYEES HAD FILED A DOCUMENT WHEREIN THEY STATED THAT THEY DID NOT WANT THE APPLICANT TO REPRESENT THEM "BECAUSE OF MISREPRESENTATION AND NOT KNOWING THE CIRCUMSTANCES INVOLVED".
4. THIS MATTER CAME ON FOR HEARING ON JUNE 28, 1971 AND BY ITS DECISION DATED JUNE 28TH THE BOARD APPOINTED AN EXAMINER TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF EVELYN D. ADAMYK WHO WAS CLAIMED BY THE RESPONDENT TO BE A MEMBER OF MANAGEMENT.
5. THE EXAMINER HELD A MEETING ON JULY 8, 1971 AND CONDUCTED HIS INQUIRY INTO THE DUTIES AND RESPONSIBILITIES OF MRS. ADAMYK. FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED JULY 16, 1971, THE RESPONDENT BY LETTER DATED JULY 23, 1971 MADE CERTAIN SUBMISSIONS

WITH RESPECT TO THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT. THE RESPONDENT'S LETTER FURTHER STATED THAT "IN ADDITION TO THE REPRESENTATIONS ON THE REPORT WITH RESPECT TO THE WITNESS, MRS. ADAMYK, INFORMATION HAS JUST COME TO THE COMPANY THAT MRS. ADAMYK THREATENED AT LEAST ONE EMPLOYEE WITH DISMISSAL IF SHE REFUSED TO SIGN A UNION CARD."

6. THIS MATTER CAME ON FOR CONTINUATION OF HEARING ON AUGUST 17, 1971. AFTER HEARING THE REPRESENTATIONS OF THE PARTIES CONCERNING THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT, THE BOARD GAVE THE RESPONDENT AN OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT ON THE QUESTION OF THE TIMELINESS OF THE ALLEGATIONS CONCERNING MRS. ADAMYK CONTAINED IN THE RESPONDENT'S LETTER OF JULY 23RD.

7. COUNSEL FOR THE RESPONDENT STATED THAT THE INFORMATION CONCERNING ITS ALLEGATIONS FIRST CAME TO THE ATTENTION OF THE COMPANY IN A LETTER FROM AN EMPLOYEE DATED JULY 15, 1971 ADDRESSED TO MR. DON GRANT, PERSONNEL MANAGER. THIS LETTER READS IN PART AS FOLLOWS:

WHEN YOU PAID A VISIT TO MACLEODS DRYDEN,
ONT. STORE, YOU GAVE ME THE PRIVILEGE TO WRITE
YOU ON ANY SUBJECT, MATTER, OR PROBLEM, AN
OPPORTUNITY OF EXPRESSION WHICH DIDN'T SEEM
TO BE AVAILABLE BEFORE.

THE EMPLOYEE THEN PROCEEDED TO COMPLAIN ABOUT CERTAIN ACTIVITIES OF MRS. ADAMYK.

8. THE PARTIES AGREED THAT THE VISIT TO THE DRYDEN STORE TO WHICH THE EMPLOYEE REFERRED WAS MADE BY MR. GRANT ON JULY 8TH AT THE TIME OF THE EXAMINER'S INQUIRY. THE PARTIES FURTHER AGREED THAT WHILE MR. GRANT HAD ALSO VISITED THE STORE BETWEEN THE DATE OF THE MAKING OF THIS APPLICATION AND THE DATE OF THE EXAMINER'S INQUIRY HE HAD NOT ATTEMPTED TO MAKE ANY INVESTIGATION OR INQUIRY CONCERNING THE UNION AT THAT TIME AND THAT NO OTHER INQUIRIES HAD BEEN MADE ON BEHALF OF THE RESPONDENT.

9. THE RESPONDENT ARGUED THAT THE ALLEGATIONS MADE IN ITS LETTER DATED JULY 23RD WERE TIMELY SINCE SUCH ALLEGATIONS WERE MADE EXPEDITIOUSLY FOLLOWING THE INFORMATION RECEIVED IN THE EMPLOYEE'S LETTER OF JULY 15TH. IT WAS ALSO ARGUED ON BEHALF OF THE RESPONDENT THAT ANY ATTEMPT BY THE COMPANY TO ELICIT INFORMATION CONCERNING THE UNION IS FRAUGHT WITH DANGER BECAUSE THE BOARD VIEWS WITH DISPROVAL ANY ATTEMPT BY AN EMPLOYER TO UNDULY INFLUENCE ITS EMPLOYEES.

10. HAVING CONSIDERED ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, WE FIND ON THE FACTS OF THIS CASE THAT THE ALLEGATIONS

MADE BY THE RESPONDENT IN ITS LETTER OF JULY 23, 1971 ARE UNTIMELY. THE QUESTION OF TIMELINESS OF ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT WAS DEALT WITH THE BOARD IN THE FLECK MANUFACTURING LIMITED CASE, 62 CLLC ¶16,236, WHEREIN THE BOARD STATED:

IT IS INCUMBENT ON ALL PARTIES TO PROCEEDINGS BEFORE THE BOARD TO INVESTIGATE MATTERS RELEVANT TO THEIR CASES AS EARLY AS POSSIBLE AND IF THEY INTEND TO MAKE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT AGAINST ANOTHER PARTY TO DO SO PROMPTLY. THE OBJECT OF THIS REQUIREMENT, WHICH FINDS EXPRESSION IN SECTION 48 [NOW SECTION 47] OF THE RULES, IS OBVIOUSLY TO EXPEDITE AND FACILITATE THE HEARING AND PROCESSING OF APPLICATIONS UNDER THE ACT AND TO AVOID PREJUDICE, DELAY OR EMBARRASSMENT TO THE PARTIES INVOLVED. DELAYED AND LAST-MINUTE ALLEGATIONS, WHICH LEAD TO ADJOURNMENTS OR CAUSE PREJUDICE, EMBARRASSMENT OR UNNECESSARY EXPENSE TO THE OTHER PARTIES, AND WHICH WITH REASONABLE DILIGENCE COULD HAVE BEEN MADE AT A MORE TIMELY STAGE OF THE PROCEEDINGS WILL NOT BE ENTERTAINED EXCEPT FOR GOOD AND SUFFICIENT CAUSE.

11. HAD THE RESPONDENT EXERCISED REASONABLE DILIGENCE IN MAKING INQUIRIES AS TO ANY IMPROPER OR IRREGULAR CONDUCT ON THE PART OF THE UNION AND HAD THE MATTERS COMPLAINED OF COME TO THE RESPONDENT'S ATTENTION FOR THE FIRST TIME JUST PRIOR TO JULY 23RD, ITS ALLEGATIONS IN THIS MATTER WOULD BE TIMELY. HOWEVER, WE ARE OF THE VIEW THAT THE RESPONDENT DID NOT EXERCISE REASONABLE DILIGENCE IN THIS CASE.

12. THE RESPONDENT SHOULD HAVE BEEN ALERTED TO THE POSSIBILITY THAT THERE MAY HAVE BEEN SOME IMPROPER OR IRREGULAR CONDUCT ON THE PART OF THE UNION WHEN THE RESPONDENT RECEIVED THE BOARD'S LETTER DATED JUNE 8, 1971, WHICH IS REFERRED TO ABOVE. APART FROM ANY OPPORTUNITY THAT THE STORE MANAGER MIGHT HAVE HAD, THE RESPONDENT'S PERSONNEL MANAGER HAD AN OPPORTUNITY TO INVESTIGATE WHEN HE VISITED THE RESPONDENT'S STORE IN DRYDEN BETWEEN THE DATE OF THE APPLICATION AND THE DATE OF THE EXAMINER'S HEARING. IT IS READILY APPARENT THAT THE CHARGES THE RESPONDENT NOW MAKES FLOWED DIRECTLY FROM THE INVITATION GIVEN TO THE EMPLOYEE WHEN THE PERSONNEL MANAGER VISITED DRYDEN ON JULY 8TH. IF THAT INVITATION TO VOICE PROBLEMS WAS PROPER ON JULY 8TH, AND IT APPEARS TO BE PROPER, IT WOULD BE EQUALLY PROPER PRIOR TO THE FIRST HEARING. SINCE ANY PARTY, INCLUDING THE RESPONDENT IN A CERTIFICATION PROCEEDING, MAY MAKE ALLEGATIONS OF IMPROPER OR

IRREGULAR CONDUCT, ANY SUCH PARTY MAY MAKE INQUIRIES TO DETERMINE WHETHER EVIDENCE OF SUCH IMPROPER OR IRREGULAR CONDUCT EXISTS. IT IS NOTED, HOWEVER, THAT COUNSEL FOR THE COMPANY IS CORRECT WHEN HE STATES THAT THE MAKING OF SUCH INQUIRIES BY THE EMPLOYER IS FRAUGHT WITH DANGER. THE DANGER, HOWEVER, DOES NOT EXIST BECAUSE INQUIRIES OF IMPROPER UNION ACTIVITIES ARE MADE BUT BECAUSE OF THE ALMOST IRRESISTIBLE TENDENCY ON THE PART OF SOME MANAGEMENT PERSONNEL TO ATTEMPT TO ASCERTAIN WHO SUPPORTS THE UNION OR TO UNDULY INFLUENCE EMPLOYEES IN THIS REGARD. OFTEN EMPLOYEES ARE SYSTEMATICALLY QUESTIONED ON AN INDIVIDUAL BASIS AND THIS, IN ITSELF, TENDS TO HAVE A COERCIVE EFFECT. IF, HOWEVER, A COMPANY CONFINES ITSELF TO ADDRESSING EMPLOYEES AS A GROUP AND ADVISES THEM THAT IT IS NOT TRYING TO ASCERTAIN WHICH EMPLOYEES SUPPORT OR OPPOSE THE UNION SINCE THAT IS A MATTER WHICH DOES NOT PROPERLY CONCERN THE COMPANY, BUT MERELY ADVISES THE EMPLOYEES THAT IT IS ONLY CONCERNED WITH PROTECTING THE FREEDOM OF CHOICE OF THE EMPLOYEES WITH RESPECT TO THE UNION. AN OPEN DISCUSSION AT SUCH A MEETING WITH EMPLOYEES SHOULD NOT BE ENCOURAGED SINCE SUCH DISCUSSIONS TEND TO DEGENERATE INTO A DISCUSSION CONCERNING THE PROS AND CONS OF CHOOSING A UNION. EMPLOYEES MAY BE INVITED TO ADVISE THE COMPANY BY LETTER IF THEY HAVE BEEN SUBJECT TO ANY IMPROPER OR IRREGULAR ACTIVITY EITHER FOR OR AGAINST THE UNION. SINCE THE LABOUR RELATIONS ACT DOES NOT CONTEMPLATE THAT AN EMPLOYER SHOULD INTERFERE WITH THE EMPLOYEES' CHOICE CONCERNING UNION REPRESENTATION, EMPLOYERS SHOULD STRIVE TO MAINTAIN A NEUTRAL POSITION AND ENDEAVOUR TO PRESERVE A CLIMATE WHEREIN THE EMPLOYEES CAN MAKE THEIR DECISIONS INDEPENDENTLY FREE FROM IMPROPER OR IRREGULAR ACTIVITIES SUCH AS THREATS, COERCION, INTIMIDATION OR UNDUE INFLUENCE. IF SUCH IMPROPER OR IRREGULAR ACTIVITIES EXIST, THE EMPLOYER HAS NOT ONLY THE RIGHT BUT THE DUTY TO BRING SUCH ACTIVITIES TO THE ATTENTION OF THE BOARD. HOWEVER, THESE ACTIVITIES MUST BE BROUGHT TO THE ATTENTION OF THE BOARD EXPEDITIOUSLY.

13. ON THE FACTS OF THIS CASE, THE RESPONDENT SHOULD HAVE BEEN ALERTED TO THE POSSIBILITY OF IMPROPER OR IRREGULAR CONDUCT BY THE BOARD'S LETTER OF JUNE 8TH, HOWEVER, THE RESPONDENT WAITED UNTIL A MONTH HAD ELAPSED AND A HEARING HAD BEEN HELD BEFORE IT ISSUED ITS INVITATION TO WHICH THE EMPLOYEE REFERRED IN HER LETTER OF JULY 15TH. IN THESE CIRCUMSTANCES, THE BOARD IS OF THE VIEW THAT THE RESPONDENT FAILED TO ACT EXPEDITIOUSLY AND ACCORDINGLY DOES NOT DEEM IT ADVISABLE TO PERMIT THE RESPONDENT TO CALL EVIDENCE IN SUPPORT OF ITS ALLEGATIONS AT THIS LATE DATE. APART FROM ANY OTHER CONSIDERATION, THE ALLEGATIONS MADE BY THE RESPONDENT WERE BROUGHT TO THE RESPONDENT'S ATTENTION BY THE PERSON WHO SIGNED THE DOCUMENT OPPOSING THE UNION AND WHO FAILED TO APPEAR AT THE FIRST HEARING. TO PERMIT THIS EVIDENCE TO BE ADDUCED AT THIS LATE DATE WOULD BE TO ALLOW THE PETITIONER AND THE RESPONDENT TO ADDUCE EVIDENCE WHICH WAS AVAILABLE AT THE TIME OF THE FIRST HEARING AND WHICH THEY FAILED TO ADDUCE AT THAT HEARING.

14. HAVING CONSIDERED THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, WE FIND THAT EVELYN E. ADAMYK DOES NOT EXERCISE MANAGERIAL FUNCTIONS AND IS NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

15. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT DRYDEN, SAVE AND EXCEPT STORE MANAGER AND PERSONS ABOVE THE RANK OF STORE MANAGER, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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17. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: SEPTEMBER 23, 1971.

THIS IS AN APPLICATION FOR CERTIFICATION WHICH WAS COMMENCED ON THE 25TH OF MAY, 1971. PRIOR TO THE TERMINAL DATE, FOUR PURPORTED EMPLOYEES OF THE RESPONDENT FORWARDED FROM DRYDEN, ONT. A LETTER TO THE REGISTRAR OF THIS BOARD WHICH READS AS FOLLOWS:-

DEAR SIRs:

WE THE UNDERSIGNED OF MACLEODS STORE DRYDEN, ONTARIO, DO NOT WANT THE RETAIL CLERKS INTERNATIONAL ASSOCIATION TO REPRESENT US IN THE HEARING ON JUNE 14TH, 1971 AT 9:15 A.M. IN TORONTO ONTARIO, BECAUSE OF MISREPRESENTATION AND NOT KNOWING THE CIRCUMSTANCES INVOLVED, ALSO, BECAUSE OF THE COST AND DISTANCE, WE ARE UNABLE TO ATTEND, THEREFORE WE WANT THIS LETTER TO BE OUR VOICE IN THE HEARING.

THE BOARD, IN ACCORDANCE WITH ITS PRACTICE THAT PERSONS MAKING CHARGES AND FILING STATEMENTS OF DESIRE MUST BE PRESENT AT THE HEARINGS, DISMISSED THE REQUEST OF THE PERSONS MAKING THE CHARGES AND IN AN INTERIM DECISION, DECLINED TO ATTEND AT DRYDEN EITHER TO HEAR THE PETITION OR THE CHARGES.

AT A SUBSEQUENT HEARING THE COMPANY INFORMED THE BOARD THAT IT HAD CERTAIN SUBMISSIONS TO MAKE IN THE FORM OF CHARGES RESPECTING THE UNION'S ORGANIZATIONAL CAMPAIGN AND IN SUPPORT OF SUCH CHARGES FILED A LETTER FROM THE SAME PERSON WHO WROTE THE INITIAL LETTER HEREBEFORE SET FORTH.

WHILE THE MAJORITY HAS SET FORTH A SMALL PORTION OF THE LETTER IN PARAGRAPH 7 OF ITS DECISION, IT HAS NEGLECTED TO SET FORTH THAT PORTION OF THE LETTER WHICH INDICATES THAT THE SIGNATORY WAS TOLD BY THE UNION ORGANIZER THAT IF SHE DID NOT JOIN THE UNION, SHE WOULD BE OUT OF A JOB.

IN PARAGRAPH 10 OF THE MAJORITY DECISION THE MAJORITY HAS SET FORTH THE OFTEN QUOTED PASSAGE FROM THE CASE OF FLECK MANUFACTURING LIMITED 62 CLLC ¶16,236, DEALING WITH THE QUESTION OF TIMELINESS IN THE FILING OF ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT.

WHILE THE PRINCIPLE STATED THEREIN HAS BEEN FOLLOWED IN MANY CASES OF THE BOARD, I WAS OF THE OPINION THAT THE POLICY OF THE BOARD HAD CHANGED SOMEWHAT AND THAT SUCH CHANGE WAS EVIDENCED BY THE BOARD'S DECISIONS IN THE CASE OF L'ABBE CONSTRUCTION LIMITED, OLRB MONTHLY REPORT, SEPTEMBER 1970, P. 673 AND (1971) OLRB REP. 141.

WHILE THE FACTS ARE CONSIDERABLY DIFFERENT, IN MY OPINION, THE DISPOSITION OF THIS CASE SHOULD BE CONSISTENT.

IN THE L'ABBE CASE, IT WAS THE COMPANY WHO WAS ALLEGING THAT THE CHARGES AGAINST IT WERE UNTIMELY DUE TO THE LACK OF DILIGENCE ON THE PART OF THE PERSONS MAKING THE ALLEGATIONS AND THE FACT THAT EVEN WHEN SUCH PURPORTED EVIDENCE WAS AVAILABLE, THE CHARGES WERE NOT LAID FOR SOME CONSIDERABLE LENGTH OF TIME.

IN THAT CASE, IN TWO SEPARATE DECISIONS, THE MAJORITY SAID:-

FIRSTLY:-

... ACCORDINGLY, NOTWITHSTANDING THE LAPSE OF TIME ON THE PART OF THE APPLICANTS IN MAKING THE INSTANT APPLICATION AND CHARGES, THE BOARD IS OF THE OPINION THAT IN THE CIRCUMSTANCES IT SHOULD ENTERTAIN THEM. IN ARRIVING AT THIS CONCLUSION WE ARE NOT UNMINDFUL OF A NUMBER OF DECISIONS WHERE THE BOARD HAS DECLINED TO ENTERTAIN ALLEGATIONS OF UNFAIR LABOUR PRACTICES WHEN THE ALLEGATIONS HAVE BEEN FILED LATE. THE DISTINCTION BETWEEN THOSE CASES AND THE INSTANT ONE, HOWEVER, IS THAT IN THE PRESENT CASE, UNLIKE THE OTHERS, IT IS SUBMITTED THAT THE UNFAIR LABOUR PRACTICES AMOUNT TO FRAUD UPON THE BOARD....

SECONDLY:-

...THE COLLUSIVE CONDUCT OF THE RESPONDENT AND THE INTERVENER HAD THE EFFECT OF DENYING TO THOSE PERSONS WHOM THE INTERVENER HIRED ON THE PROJECT A BASIC RIGHT GUARANTEED UNDER THE ACT. MORE SPECIFICALLY, SECTION 3 OF THE ACT GUARANTEES THAT EVERY PERSON IS FREE TO JOIN A TRADE UNION OF HIS OWN CHOICE. HAD THE BOARD BEEN AWARE THAT THE EMPLOYEES FOR WHOM THE RESPONDENT WAS CERTIFIED AS BARGAINING AGENT HAD BEEN COMPELLED TO JOIN THE RESPONDENT AS A CONDITION OF BEING HIRED ON THE INTERVENER'S PROJECT AT HEARST, WE ARE CONFIDENT THAT THE BOARD WOULD NOT HAVE ISSUED THE CERTIFICATE DATED APRIL 23, 1970 TO THE RESPONDENT.

27. THE TACTICS USED BY THE RESPONDENT TO SECURE THE EVIDENCE OF MEMBERSHIP WHICH IT SUBMITTED IN SUPPORT OF ITS APPLICATION FOR CERTIFICATION ARE REPUGNANT TO THE ENTIRE PURPOSE AND SCHEME OF THE ACT. IN LIGHT OF THE FACT THAT THE RESPONDENT OBTAINED A CERTIFICATE BASED ON EVIDENCE OF MEMBERSHIP SECURED IN THE MANNER IN WHICH IT WAS, IN OUR OPINION, AMOUNTED TO FRAUD WITHIN THE MEANING OF SECTION 44 OF THE ACT....

TO ME, THE TWO DECISIONS ARE IRRECONCILABLE. I TRUST THAT THE BOARD IS NOT SAYING THAT IT WILL ENTERTAIN ALLEGATIONS THAN AN EMPLOYER HAS INTERFERED WITH THE EMPLOYEE'S FREEDOM TO JOIN THE TRADE UNION OF HIS CHOICE, BUT THAT IT WILL NOT ENTERTAIN ALLEGATIONS THAT A UNION COERCED OR INTIMIDATED AN EMPLOYEE INTO JOINING THE UNION.

MAY I DEAL NOW WITH THE SUGGESTION BY THE MAJORITY THAT THE COMPANY HAS A DUTY TO MAKE SUCH INQUIRIES AS ARE NECESSARY IN ORDER TO UNCOVER ANY IMPROPER OR IRREGULAR ACTIVITIES BY THE UNION IN THE CONDUCT OF ITS ORGANIZATIONAL CAMPAIGN.

INDEED, EMPLOYERS PURPORTEDLY ARE IN A POSITION TO EXPRESS THEIR VIEWS BY VIRTUE OF SECTION 56 (FORMERLY SECTION 48) OF THE LABOUR RELATIONS ACT WHICH PROVIDES AS FOLLOWS:-

NO EMPLOYER OR EMPLOYERS' ORGANIZATION AND NO PERSON ACTING ON BEHALF OF AN EMPLOYER OR AN EMPLOYERS' ORGANIZATION SHALL PARTICIPATE IN OR INTERFERE WITH THE FORMATION, SELECTION OR ADMINISTRATION OF A TRADE UNION OR THE REPRESENTA-

TION OF EMPLOYEES BY A TRADE UNION OR CONTRIBUTE FINANCIAL OR OTHER SUPPORT TO A TRADE UNION, BUT NOTHING IN THIS SECTION SHALL BE DEEMED TO DEPRIVE AN EMPLOYER OF HIS FREEDOM TO EXPRESS HIS VIEWS SO LONG AS HE DOES NOT USE COERCION, INTIMIDATION, THREATS, PROMISES OR UNDUE INFLUENCE.

NOTWITHSTANDING THE PROVISIONS OF SECTION 56 OF THE LABOUR RELATIONS ACT, HAVING REGARD TO THE JURISPRUDENCE OF THE BOARD, IT WOULD TAKE ONLY A COMPANY WITH THE WISDOM OF SOLOMON, AND THE SOPHISTICATION OF MANY YEARS OF INDUSTRIAL RELATIONS, TO TREAD IN THE FIELD OF THE UNION ORGANIZATIONAL CAMPAIGN, WITH ANY CONFIDENCE THAT ITS ACTIONS WOULD NOT BE CRITICIZED BY THIS BOARD IF SUCH ACTIONS WERE QUESTIONED BY THE UNION.

IT IS TERRITORY WHERE THIS BOARD HAS SUGGESTED THAT PRUDENCE DICTATES A "HANDS OFF" POLICY, AND ACCORDINGLY FOR THE MAJORITY TO SUGGEST THAT INQUIRIES BY THE COMPANY OF IRREGULAR AND IMPROPER CONDUCT ARE "FRAUGHT WITH DANGER" IS A COMPLETE UNDERSTATEMENT OF THE POSITION INVARIABLY TAKEN BY THE BOARD.

855-71-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. SUNNYBROOK FOOD MARKET (KEELE) LIMITED (RESPONDENT) V. LOCAL 206 NATIONAL COUNCIL OF CANADIAN LABOUR (INTERVENER).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS J.D. BELL AND A. MAIN.

APPEARANCES AT THE HEARING: I.J. THOMSON FOR THE APPLICANT; M. GOODBAUM AND W.S. COOK FOR THE RESPONDENT; LEON J. LABONTE FOR THE INTERVENER.

DECISION OF THE BOARD: SEPTEMBER 23, 1971.

1. THE NAME "SUNNYBROOK FOOD MARKET" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "SUNNYBROOK FOOD MARKET (KEELE) LIMITED.

. . .

3. THE APPLICANT ORIGINALLY APPLIED FOR A BARGAINING UNIT CONSISTING OF ALL EMPLOYEES OF THE RESPONDENT COMPANY AT METROPOLITAN TORONTO WITH CERTAIN EXCEPTIONS THAT ARE NOT HERE MATERIAL AND IN ITS

REPLY THE RESPONDENT AGREED WITH THE DESCRIPTION OF THE BARGAINING UNIT AS AN ALL EMPLOYEE UNIT AND DIFFERED ONLY IN DESCRIBING THE EXCEPTIONS. THE RESPONDENT ADVISED THAT IT HAD A COLLECTIVE AGREEMENT WITH THE INTERVENER. THAT COLLECTIVE AGREEMENT PROVIDED THAT THE RESPONDENT RECOGNIZED THE INTERVENER AS THE SOLE AND EXCLUSIVE BARGAINING AGENT FOR "ALL EMPLOYEES IN ITS STORES IN ONTARIO, SAVE AND EXCEPT DEPARTMENT MANAGERS, PORTERS, HEAD OFFICE AND WAREHOUSE STAFF, EMPLOYEES EMPLOYED FOR NOT MORE THAN 28 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE EASTER VACATION, THE CHRISTMAS VACATION OR THE PERIOD MAY 15TH TO SEPTEMBER 15TH INCLUSIVE."

4. UPON LEARNING OF THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER AND PRIOR TO THE HEARING THE APPLICANT SOUGHT TO AMEND THE DESCRIPTION OF THE BARGAINING UNIT IN ITS APPLICATION TO COVER ONLY THE WAREHOUSEMEN OF THE RESPONDENT IN METROPOLITAN TORONTO. THE APPLICANT SUBMITTED THAT IT ONLY SOUGHT TO ORGANIZE THOSE PERSONS AT THE WAREHOUSES.

5. AT THE HEARING THE RESPONDENT COMPANY SUBMITTED THAT IN VIEW OF THE CHANGE IN THE DESCRIPTION OF THE BARGAINING UNIT THAT NOTICE OF THIS HEARING SHOULD BE REPOSTED AND THE HEARING SHOULD BE ADJOURNED. NOTICE TO EMPLOYEES OF THE APPLICATION FOR CERTIFICATION AND OF HEARING WHICH WAS POSTED ADVISED THE EMPLOYEES AS TO THE DESCRIPTION OF THE BARGAINING UNIT. SINCE THIS WAS AN "ALL EMPLOYEE UNIT" ALL EMPLOYEES WERE AWARE THAT AT THE HEARING OF THIS MATTER THEIR RIGHTS AND INTERESTS MIGHT BE AFFECTED, AND ACCORDINGLY THEY ALL HAD THE OPPORTUNITY TO APPEAR AND MAKE REPRESENTATIONS. IT IS COMMON BEFORE THIS BOARD THAT AT THE HEARING THE DESCRIPTION OF THE BARGAINING UNIT AS SUGGESTED BY THE PARTIES IS ALTERED OR AMENDED AS A RESULT OF DELETIONS OR ACCRETIONS TO THE PROPOSED UNITS. NO ONE APPEARED ON BEHALF OF ANY OF THE EMPLOYEES AND IT APPEARED THAT THE INTERVENER REPRESENTS OTHER EMPLOYEES WHO MAY BE AFFECTED. ACCORDINGLY, NO USEFUL PURPOSE WOULD BE SERVED IN REPOSTING THIS APPLICATION AND HAVING A FURTHER HEARING AND THE REQUEST BY THE RESPONDENT IS DENIED.

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9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

725-71-U: THE LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (COMPLAINANT) V. LECOURS LUMBER CO. (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: RENE BRIXHE AND GERARD GRONDIN FOR THE COMPLAINANT; F. R. VON VEH, BENOIT LECOURS AND JULES LECOURS FOR THE RESPONDENT.

DECISION OF FRANK V. BOSCARIOL, VICE-CHARMAN AND BOARD MEMBER P. J. O'KEEFFE:
SEPTEMBER 27, 1971.

1. THE NAME "LECOURS LUMBER COMPANY" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "LECOURS LUMBER Co."
2. THIS IS AN APPLICATION FILED UNDER THE PROVISIONS OF SECTION 79 OF THE LABOUR RELATIONS ACT, WHEREIN THE COMPLAINANT ALLEGES THAT THE AGGRIEVED PERSON, GERARD GRONDIN, WAS DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 58(A) OF THE ACT.
3. AT THE HEARING OF THIS MATTER ON SEPTEMBER 16, 1971, THE ONLY EVIDENCE PRESENTED TO THE BOARD WAS THROUGH THE AGGRIEVED PERSON HIMSELF. AT THE CONCLUSION OF HIS TESTIMONY THE COMPLAINANT CLOSED ITS CASE, WHEREUPON THE RESPONDENT ELECTED TO CALL NO EVIDENCE AND MOVED FOR DISMISSAL OF THE COMPLAINT.
4. THE EVIDENCE OF GERARD GRONDIN IS TO THE EFFECT THAT HE INITIALLY STARTED WORKING INTERMITTENTLY FOR THE RESPONDENT FROM 1961 UNTIL 1966 WHEN HIS EMPLOYMENT BECAME STEADY. SINCE THAT TIME, HE WAS TEMPORARILY LAID OFF ON TWO OCCASIONS. THE FIRST TIME WAS IN THE SPRING OF 1969 WHEN THE MILL BURNED DOWN AND WAS FOR A PERIOD OF APPROXIMATELY SIX MONTHS. THE SECOND OCCASION TOOK PLACE IN THE SPRING OF 1970 AND EXTENDED FOR A PERIOD OF SOME SIX WEEKS. WHEN HE SUBSEQUENTLY RETURNED TO WORK, HE WAS EMPLOYED IN OPERATIONS INVOLVING THE CRANE, SAW DUST TRUCK AND OTHER VARIED TASKS INCLUDING THE OPERATION OF THE RESPONDENT'S PRENTICE, LOADER, A TRUCK EQUIPPED WITH A LOG-LOADING ATTACHMENT. IN THIS CONNECTION, WE ARE SATISFIED THAT THE WITNESS WAS A VERY VERSATILE AND COMPETENT EMPLOYEE.
5. THE WITNESS FURTHER TESTIFIED THAT HE HAD OPERATED THE PRENTICE LOADER FOR A PERIOD OF FIVE DAYS PRIOR TO HIS TERMINATION. ON JUNE 7, 1971, HE REPORTED FOR WORK AT 7:30 A.M. AND DISCOVERED THAT THE KEYS IN THE IGNITION WERE MISSING. UPON QUESTIONING HIS FOREMAN, BEN LECOURS, IN THIS REGARD, HE WAS INSTRUCTED TO WAIT UNTIL 10:00 A.M. WHEN THE MANAGER, JULES LECOURS, WAS EXPECTED TO ARRIVE. AT 9:50 A.M., HE WAS FURTHER INSTRUCTED BY HIS FOREMAN TO ATTEND THE MANAGER'S OFFICE WHEREUPON JULES LECOURS HANDED HIM AN ENVELOPE CONTAINING A LETTER, HIS PAYROLL RECORD (BOTH FILED AS EXHIBIT #1) AND SOME CHEQUES.
6. THE RELEVANT PORTION OF THIS LETTER IS ADDRESSED TO GRONDIN AND READS AS FOLLOWS:

"THIS WILL SERVE TO ADVISE YOU THAT EFFECTIVE IMMEDIATELY YOUR SERVICES WITH THE COMPANY SHALL NO LONGER BE REQUIRED SINCE THE JOB YOU WERE EMPLOYED IN, HAS BEEN DISCONTINUED".

7. IN THE WORDS OF THE WITNESS, THE FOLLOWING EVENTS THEN TRANSPIRED:

"I OPENED THE ENVELOPE AND SAW MY CHEQUES. I ASKED HIM IF I WAS FIRED. HE DIDN'T SAY ANYTHING BUT JUST SMILED AT ME. I ASKED AM I FIRED OR LAID OFF. ALL HE SAID WAS READ THE LETTER".

IN THIS CONNECTION, THE WITNESS STATED THAT HE DID NOT KNOW HOW TO READ AND THAT THE MANAGER WAS AWARE OF THIS FACT. AT THIS POINT, BEN LECOURS ARRIVED IN THE OFFICE WHEREUPON THE WITNESS ASKED HIM IF HE WOULD BE RE-EMPLOYED ON THE CRANE NEXT WINTER AND WAS TOLD "WE'LL SEE ABOUT THAT". UPON CROSS-EXAMINATION, THE WITNESS DID CONCEDE THAT THIS WAS NOT THE EXTENT OF THE CONVERSATION WITH BEN LECOURS AND THAT THE QUESTION OF ECONOMY IN CONTRACTING OUT THE PRENTICE LOADER OPERATION, WAS ALSO DISCUSSED.

8. THE WITNESS FURTHER TESTIFIED THAT ALTHOUGH HE WAS AWARE THAT THE INDEPENDENT CONTRACTOR DID PERFORM SOME OF THE PRENTICE LOADER OPERATIONS, HE DID PERSONALLY OBSERVE ANOTHER EMPLOYEE OPERATE THE PRENTICE LOADER, SOME TWO WEEKS FOLLOWING HIS TERMINATION. DESPITE EXTENSIVE CROSS-EXAMINATION IN THIS REGARD, THE WITNESS REMAINED STEADFAST AND UNSHAKEN IN HIS POSITION THAT THE MACHINE WAS IN USE AND NOT STATIONARY SINCE THE TIME OF HIS TERMINATION, AS SUGGESTED TO HIM BY COUNSEL FOR THE RESPONDENT.

9. AS REGARDS UNION ACTIVITY, THE WITNESS TESTIFIED THAT THE COMPLAINANT HAD BEGUN ORGANIZING THE EMPLOYEES OF THE RESPONDENT APPROXIMATELY FOUR MONTHS PRIOR TO THE DATE OF THIS HEARING AND IN THIS CONNECTION HE OPENLY ASSISTED THE UNION ORGANIZER, MR. FONTAINE IN SIGNING UP THE EMPLOYEES. WHEN ASKED IF MANAGEMENT EVER SPOKE TO HIM CONCERNING THESE ACTIVITIES, HE STATED THAT ALL FOUR LECOURS (VIZ. JULES, BEN, LAURENT AND FRANCOISE) HAD SPOKEN TO HIM IN THIS REGARD. WHEN THE WITNESS WAS SPECIFICALLY ASKED AS TO WHAT WAS ACTUALLY SAID TO HIM IN THESE CONVERSATIONS, COUNSEL FOR THE RESPONDENT OBJECTED TO THE QUESTION ON THE GROUNDS THAT HE WAS NOT SUPPLIED WITH SUFFICIENT PARTICULARS IN THE FORMAL COMPLAINT. ALTHOUGH THE BOARD UPHELD THE VALIDITY OF THE OBJECTION IN THE CIRCUMSTANCES, WE NEVERTHELESS ARE SATISFIED THAT THE ABOVE-NAMED INDIVIDUALS AND HENCE THE RESPONDENT, WERE AWARE OF GRONDIN'S ACTIONS IN THIS REGARD.

10. IN THE COURSE OF HIS ARGUMENT, COUNSEL FOR THE APPLICANT REFERRED TO THE PASQUALE BROS. LIMITED CASE, [1971] OLRB REP. 283, WHEREIN THE FACTS ARE NOT ENTIRELY DISSIMILAR TO THOSE PRESENT IN THE INSTANT APPLICATION. THERE, AS IN THIS CASE, COUNSEL MOVED FOR A NON-SUIT UPON COMPLETION OF THE COMPLAINANT'S CASE. IN THE COURSE OF DISMISSING THE APPLICATION AND THUS GRANTING THE MOTION, THE LEARNED VICE-CHAIRMAN STATED AT PAGE 287:

"IT SHOULD BE OBSERVED AT THIS POINT THAT THERE IS NO EVIDENCE BEFORE THE BOARD, DIRECT OR INFERENTIAL, WHICH ESTABLISHES ANY KNOWLEDGE ON THE PART OF THE RESPONDENT OF ANY UNION ACTIVITY BY, OR INDEED, OF MEMBERSHIP IN THE UNION OF ANY OF THE EMPLOYEES WITH WHICH WE ARE HERE CONCERNED. THIS IS SERIOUS DEFICIENCY IN THE COMPLAINANT'S CASE. THERE WAS, IT IS TRUE, AN INVITATION BY DOMINIONI TO DRAW THE INFERENCE FROM PART OF WHAT WAS SAID TO HIM AT HIS TERMINATION THAT HE WAS BEING LET GO BECAUSE OF THE UNION. A PROPER CONSIDERATION OF THE ENTIRE CONVERSATION THAT TOOK PLACE AT THAT TIME, HOWEVER, COMPELS THE CONCLUSION THAT THAT INFERENCE CANNOT BE REASONABLY SUSTAINED ON THE EVIDENCE".

11. HOWEVER, IN THE INSTANT CASE, THE UNCONTRADICTED EVIDENCE OF GRONDIN AS OUTLINED IN PARAGRAPH 8 HEREIN, IS TO THE EFFECT THAT THE RESPONDENT HAD KNOWLEDGE THAT HE WAS ENGAGING IN UNION ACTIVITIES DURING THE APPLICANT'S ORGANIZATIONAL CAMPAIGN.

12. IN THIS REGARD, REFERENCE SHOULD BE HAD TO THE PRINCIPLES AS SET OUT IN THE NATIONAL AUTOMATIC VENDING CO. LTD. CASE, CLLC, VOL. 2, 1960-1964 ARTICLE 16278, P. 1161 AT PAGE 1163:

"THE FACT THAT THE PRIMARY ONUS FOR ESTABLISHING THE MERITS OF THE COMPLAINT LIES ON THE COMPLAINANT, DOES NOT, OF COURSE, MEAN THAT THE COMPLAINANT IS BOUND TO DEMONSTRATE BY DIRECT EVIDENCE EACH AND EVERY FACT OR CONCLUSION OF FACT UPON WHICH THE ISSUE IN DISPUTE DEPENDS. REASONABLE AND NECESSARY INFERENCES MAY AND MUST

BE DRAWN FROM ALL THE EVIDENCE ADDUCED AND THAT WHICH IS CLEARLY INFERRABLE FROM THE EVIDENCE IS AS MUCH PROVED AS IF IT HAD BEEN ESTABLISHED BY DIRECT EVIDENCE. AS WE POINTED OUT BY THE BOARD IN THE METROPOLITAN MEAT PACKERS LTD. CASE, CCH CANADIAN LABOUR LAW REPORTERS, VOL. 1, ¶16,230, THE ONUS OF PROOF RESTING ON THE COMPLAINANT IN A CLAIM UNDER SECTION 65 OF THE ACT IS NO GREATER THAN IN AN ORDINARY CIVIL ACTION, NAMELY THAT TO BE SUCCESSFUL A COMPLAINANT MUST PROVE, BY A PREPONDERANCE OF PROBABILITY THAT THE EMPLOYER, HAS, IN THE MANNER ALLEGED IN THE PROCEEDINGS, DISCRIMINATED AGAINST THE EMPLOYEE CONTRARY TO THE ACT. (SEE ALSO HANES V. WAWANESA MUTUAL INSURANCE COMPANY (1963) 36 D.L.R. (2d) 718 (S.C.C.), WHERE THE SUPREME COURT OF CANADA RECENTLY SETTLED THE QUESTION THAT THE BURDEN OF PROOF IN CIVIL CASES INVOLVING QUASI-CRIMINAL OR CRIMINAL CONDUCT IS THE STANDARD IN CIVIL ACTION.)

IT IS NOT WITHOUT SOME INTEREST TO NOTE THE FOLLOWING STATEMENTS CONCERNING THE QUANTUM OF PROOF REQUIRED BY THE COURTS WHERE THE FACTS OF AN ISSUE TO BE PROVED LIE PECULIARLY WITHIN THE KNOWLEDGE OR MEANS OF KNOWLEDGE OF THE OPPOSITE PARTY:-

....IN CONSIDERING THE AMOUNT OF EVIDENCE NECESSARY TO SHIFT THE BURDEN OF PROOF, THE COURT HAS REGARD TO THE OPPORTUNITIES OF KNOWLEDGE WITH RESPECT TO THE FACT TO BE PROVED, WHICH MAY BE PROVED, WHICH MAY BE POSSESSED BY THE PARTIES RESPECTIVELY CUMMINGS V. VANCOUVER (1911) 1 W.W.R. 31 PER IRVING, J.A., AT P.34, QUOTING FROM STEPHEN'S DIGEST OF THE LAWS OF EVIDENCE, 9TH ED., ART. 96 (AFFD. 46 S.C.R. 457; SEE ALSO WINDSOR BOARD OF EDUCATION V.

FORD MOTOR CO. OF CANADA LTD. [1939] S.C.R. 413, PER DAVIES J. DISSSENTING AT P. 432, [1941] A.C. 453, PER LORD ATKIN AT P. 461; R V. KAKALO [1923], 2 K.B. AT P. 795; PHIPSON ON EVIDENCE, 9TH ED., P. 41.)

...WHERE THE FACTS LIE PECULIARLY WITHIN THE KNOWLEDGE OF ONE OF THE PARTIES, VERY SLIGHT EVIDENCE MAY BE SUFFICIENT TO DISCHARGE THE BURDEN OF PROOF RESTING ON THE OPPOSITE PARTY - TAYLOR ON EVIDENCE, 12TH ED. VOL. 1, PP. 262-263. (SEE ALSO PLEET V. CANADIAN NORTHERN QUEBEC R. W. CO., (1921) 50 O.L.R. 223).

A RULE OF EVIDENCE WILL BE FOUND STATED IN THE TEXT BOOKS IN THE FOLLOWING WORDS: "WHERE THE SUBJECT MATTER OF THE ALLEGATION LIES PECULIARLY WITHIN THE KNOWLEDGE OF ONE OF THE PARTIES, THAT PARTY MUST PROVE IT, WHETHER IT BE OF AN AFFIRMATIVE OR A NEGATIVE CHARACTER, AND EVEN THOUGH THERE BE A PRESUMPTION OF LAW IN HIS FAVOUR --. THIS RULE HAS BEEN MODIFIED BY LATER AUTHORITIES. IN PHIPSON ON EVIDENCE, P. 27, IT IS SAID THAT: IN THE ABSENCE OF STATUTORY PROVISIONS, THE BETTER OPINION NOW SEEMS TO BE THAT, IN GENERAL, SOME PRIMA FACIE EVIDENCE MUST BE GIVEN BY THE COMPLAINANT IN ORDER TO CAST A BURDEN UPON HIS ADVERSARY. THE DIFFICULTY OF PROVING A FACT PECULIARLY KNOWN TO AN OPPONENT MAY, IT HAS BEEN SAID, AFFECT THE QUANTUM OF EVIDENCE DEMANDED IN THE FIRST INSTANCE BUT DOES NOT CHANGE THE RULE OF LAW". I THINK THIS RULE APPLICABLE TO THE PRESENT CASE AND THAT VERY SLIGHT EVIDENCE AS TO THE DEFENDENT DOING BUSINESS WAS SUFFICIENT TO SHIFT THE BURDEN TO THE DEFENDANT WACHNOW V. MYERS [1921] W.W.R. 17 (MAN. C.A.) PER FULLERTON, J.A., PP. 17-18.

IN ORDER TO SHIFT THE BURDEN OF JUSTIFICATION TO THE EMPLOYER IN AN ACTION BY A FORMER EMPLOYEE AGAINST AN EMPLOYER AT COMMON LAW FOR DAMAGES FOR WRONGFUL DISMISSAL, THE PLAINTIFF EMPLOYEE NEED PROVE ONLY (1) THE CONTRACT OF HIRING, (2) THE FACT OF HIS DISCHARGE AND (3) HIS DAMAGES. WHEN HE DOES THIS, AN ONUS THEN SHIFTS TO THE DEFENDANT EMPLOYER TO ESTABLISH THAT PROPER CAUSE EXISTED FOR THE DISMISSAL. (SEE GEORGE DITCHFIELD V. GIBSON MANUFACTURING COMPANY LTD. CCH CANADIAN LABOUR LAW REPORTER, VOL. 1 ¶15,362, McINNES V. FERGUSON, (1899) 32 N.S.R. 516; BUTLER V. C.N.R. [1940] 1 D.L.R. 256.)

13. HAVING CAREFULLY ASSESSED THE DEMEANOUR OF GRONDIN IN GIVING TESTIMONY, THE SOLE WITNESS TO THESE PROCEEDINGS, WE ARE FAVOURABLY IMPRESSED WITH HIS CREDIBILITY. IN THIS CONNECTION, WE NOTE HIS FRANK ADMISSION THAT LAY-OFFS TOOK PLACE IN THE PAST WITHOUT REGARD TO "SENIORITY", A STATEMENT HE MUST HAVE KNOWN WHICH WOULD RUN COUNTER TO HIS INTEREST IN THESE PROCEEDINGS. ALTHOUGH HE FAILED TO FULLY DISCLOSE THE EXTENT OF THE CONVERSATION WITH BEN LECOURS CONCERNING THE CONTRACTING OUT SITUATION AS REFERRED TO IN PARAGRAPH 6 HEREIN, HE READILY CONCEDED TO ITS EXISTENCE WHEN THE QUESTION WAS DIRECTLY PUT TO HIM ON CROSS-EXAMINATION. MOREOVER, HIS POSITION THAT THE RESPONDENT'S PRENTICE LOADER WAS IN FACT PUT INTO OPERATION FOLLOWING HIS TERMINATION WAS UNSHAKEN DESPITE THE RESPONDENT'S PENETRATING CROSS-EXAMINATION ATTEMPTING TO SUGGEST THE CONTRARY. IN ADDITION, THE BOARD HAS TAKEN INTO ACCOUNT OTHER CIRCUMSTANCES OF THIS CASE, INCLUDING GRONDIN'S RATHER UNBLEMISHED EMPLOYMENT HISTORY, HIS OVERT ACTS OF UNION ACTIVITY COINCIDENTAL WITH HIS TERMINATION, THE TIMING AND MANNER OF SUCH TERMINATION TOGETHER WITH THE REASONS GIVEN BY THE RESPONDENT WHICH THE WITNESS THROUGH PERSONAL OBSERVATION DISPELLED.

14. HAVING REGARD TO ALL THE CIRCUMSTANCES AND UPON CAREFULLY REVIEWING THE TOTALITY OF THE EVIDENCE IN THIS REGARD, THE BOARD FINDS THAT THE COMPLAINANT HAS MADE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED SO AS TO PLACE AN ONUS UPON THE RESPONDENT TO REPLY AND THAT SUCH ONUS HAS NOT BEEN LIFTED BY THE CROSS-EXAMINATION PORTION OF THE AGGRIEVED PERSON'S OWN TESTIMONY. THE BOARD THEREFORE FINDS ITSELF IMPELLED TO CONCLUDE, IN THE ABSENCE OF ANY EVIDENCE CALLED BY THE RESPONDENT TO THE CONTRARY, THAT ON THE BALANCE OF PROBABILITIES, THE RESPONDENT DID TERMINATE GERARD GRONDIN BECAUSE OF HIS UNION ACTIVITY, CONTRARY TO THE PROVISIONS OF SECTION 58(A) OF THE LABOUR RELATIONS ACT.

15. THE BOARD THEREFORE DIRECTS THAT THE RESPONDENT REINSTATE GERARD GRONDIN IN THE SAME OR LIKE POSITION AS HE HELD ON THE DATE OF HIS TERMINATION ON JUNE 7, 1971. THE BOARD FURTHER DIRECTS THAT THE RESPONDENT PAY TO GERARD GRONDIN AS COMPENSATION FOR LOSS OF WAGES FROM JUNE 7, 1971 TO JULY 9, 1971, THE SUM OF \$729.00.

16. THE PARTIES SHALL MEET FORTHWITH TO AGREE UPON THE AMOUNT OF LOSS OF EARNINGS, IF ANY, SUSTAINED BY GERARD GRONDIN BETWEEN SEPTEMBER 16, 1971 AND THE DATE OF HIS ACTUAL REINSTATEMENT BY THE RESPONDENT. IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES WITHIN 7 DAYS AFTER THE RELEASE OF HIS DECISION OR WITHIN SUCH FURTHER PERIODS AS THE PARTIES MAY MUTUALLY AGREE UPON, THE AMOUNT OF ANY SUCH FURTHER COMPENSATIONS PAYABLE, IF ANY, WILL BE DETERMINED BY THE BOARD UPON THE MOTION OF EITHER PARTY FOR A FURTHER HEARING FOR THAT PURPOSE.

DECISION OF BOARD MEMBER J. D. BELL: SEPTEMBER 27, 1971.

1. AFTER CAREFULLY REVIEWING THE EVIDENCE IN TOTAL, I WOULD FIND THAT THE COMPLAINANT HAS NOT MADE OUT A PRIMA FACIE CASE.

2. I WOULD CONCLUDE THAT GERARD GRONDIN WAS TERMINATED BECAUSE HIS JOB WAS TERMINATED. THIS IS NOT CONTRARY TO THE PROVISIONS OF SECTION 58(A) OF THE LABOUR RELATIONS ACT.

3. I WOULD DISMISS THE COMPLAINT.

869-71-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION NO. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. GEORGE LANTHIER & FILS LIMITEE (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: I. J. THOMSON AND GEORGE HARRISON FOR THE APPLICANT; BENJAMIN LAMB AND CLAUDE LANTHIER FOR THE RESPONDENT.

DECISION OF THE BOARD: SEPTEMBER 27, 1971.

. . .

2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

3. AT THE HEARING OF THIS MATTER ON SEPTEMBER 14, 1971, THE RESPONDENT SOUGHT TO DESCRIBE THE GEOGRAPHICAL DESCRIPTION OF THE

BARGAINING UNIT OF DRIVER-SALESMEN IN TERMS OF THOSE WORKING AT ALEXANDRIA AND CORNWALL. THE APPLICANT, ON THE OTHER HAND, MAINTAINED THAT THE BARGAINING UNIT SHOULD BE CONFINED TO THE MUNICIPALITY OF ALEXANDRIA.

4. IN THE ABSENCE OF ANY INTERCHANGE OF EMPLOYEES, IT WOULD APPEAR THAT BOARD POLICY IN THIS REGARD IS TO CONFIN BARGAINING UNITS TO A SPECIFIC MUNICIPALITY. REFERENCE IN THIS REGARD IS DIRECTED TO THE WITTICH'S BREAD LIMITED CASE, OLRB M.R. JANUARY 1969 AT P. 1019.

5. HAVING REGARD TO THE ABOVE PRINCIPLE, THE BOARD THEREFORE FINDS THAT ALL DRIVER-SALESMEN OF THE RESPONDENT AT ALEXANDRIA, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

. . .

7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

826-71-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. A. G. SIMPSON COMPANY LIMITED (RESPONDENT) V. SIMPSON PLANT COUNCIL (INTERVENER).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND E. BOYER.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG, B. LEE AND R. WHITE FOR THE APPLICANT, W. S. COOK AND A. G. SIMPSON FOR THE RESPONDENT, PATRICK GRAVELY AND SID THORPE FOR THE INTERVENER.

DECISION OF THE BOARD: SEPTEMBER 24, 1971.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN IT WAS ALLEGED THAT GEORGE STANLEY HAD NOT PAID THE SUM OF \$1.00 AS INITIATION FEE FOR MEMBERSHIP IN THE APPLICANT AS APPEARS ON THE FACE OF THE MEMBERSHIP CARD FILED BY THE APPLICANT ON HIS BEHALF.

2. MR. STANLEY TESTIFIED THAT HE SIGNED A MEMBERSHIP CARD ON JUNE 28, 1971 AT THE REQUEST OF LOUIS BOLYKI, A FELLOW EMPLOYEE. HE STATED THAT HE DID NOT HAVE \$1.00 WITH HIM AT THE TIME HE SIGNED THE CARD AND HE THEREFORE PROMISED TO PAY MR. BOLYKI THE MONEY THE FOLLOWING FRIDAY. AT THE TIME THE CARD WAS SIGNED BY MR. STANLEY, THE PORTION OF THE CARD IMMEDIATELY ABOVE HIS SIGNATURE WAS LEFT BLANK. THIS PORTION OF THE CARD READS AS FOLLOWS:

I, THE UNDERSIGNED, CERTIFY THAT I PAID THE
SUM OF \$..... ON THIS APPLICATION.

BECAUSE OF THE INTERVENTION OF THE SUMMER VACATION PERIOD AND THE
SUBSEQUENT DISCHARGE OF MR. BOLYKI, MR. STANLEY DID NOT SEE MR.
BOLYKI AGAIN UNTIL AUGUST 30TH, THE DATE THE VOTE WAS TAKEN.

3. ALTHOUGH HE APPARENTLY CHANGED HIS MIND ABOUT PAYING THE
INITIATION FEE SOME TIME DURING THE MONTH OF JULY OR EARLY AUGUST,
MR. STANLEY NEVER TOLD MR. BOLYKI THAT HE WOULD NOT PAY AND MR. BOL-
YKI NEVER REQUESTED PAYMENT FROM HIM AFTER JUNE 28TH.

4. SHORTLY AFTER SIGNING THE CARD ON JUNE 28TH, MR. STANLEY
MENTIONED THE APPLICANT'S ORGANIZING CAMPAIGN TO THE PRESIDENT OF
THE INTERVENER EMPLOYEES' ASSOCIATION AND ADVISED HIM THAT HE HAD
SIGNED A MEMBERSHIP CARD BUT HAD NOT PAID \$1.00.

5. ON AUGUST 9TH, THE UNION FORWARDED AN OFFICIAL RECEIPT TO
MR. STANLEY TOGETHER WITH A LETTER THAT READS AS FOLLOWS:

ENCLOSED IS YOUR OFFICIAL RECEIPT FOR
THE ONE DOLLAR (\$1.00) YOU PAID WHEN YOU SIGNED
A CARD AND JOINED U.A.W. WE WELCOME YOU AND
CONGRATULATE YOU ON YOUR CHOICE OF U.A.W. AS
YOUR UNION. THE \$1.00 YOU PAID IS YOUR INITIA-
TION FEE IN FULL. DUES IN U.A.W. DO NOT START
UNTIL SUCH TIME AS THE UNION IS CERTIFIED AND
YOUR FIRST U.A.W. AGREEMENT IS IN EFFECT.

IF, FOR ANY REASON, OUR RECORDS ARE NOT
ACCURATE AND YOU HAVE NOT SIGNED A U.A.W. CARD
AND PAID \$1.00 PLEASE NOTIFY US BY WRITING TO
OUR OFFICE (ADDRESS ABOVE). UNLESS WE HEAR FROM
YOU WITHIN SEVEN (7) DAYS OF MAILING THIS LETTER,
WE WILL ASSUME THAT OUR RECORDS ARE CORRECT.

U.A.W. HAS FILED AN APPLICATION FOR CER-
TIFICATION ON YOUR BEHALF AND WE HAVE REQUESTED
THE ONTARIO LABOUR RELATIONS BOARD TO CONDUCT A
SECRET BALLOT VOTE TO DETERMINE WHETHER OR NOT
THE MAJORITY OF THE A. G. SIMPSON PLANT WORKERS
WANT TO BE REPRESENTED BY U.A.W.

A DEPARTMENT OF LABOUR NOTICE WILL APPEAR
ON YOUR PLANT BULLETIN BOARDS WITH FURTHER INFOR-
MATION AND PROCEDURAL DETAIL.

KEEP IN MIND THAT ON THE SECRET BALLOT THE
CHOICE WILL BE - YOUR PRESENT COUNCIL OR - U.A.W.

WE WILL KEEP YOU INFORMED AT EACH STAGE
AS WE PROGRESS THE CAMPAIGN.

I WISH TO THANK ALL THOSE WHO HAVE TAKEN
ACTIVE PART IN THE CAMPAIGN TO DATE -- THAT AS-
SISTANCE MADE THIS APPLICATION POSSIBLE.

MR. STANLEY NEVER ADVISED THE UNION THAT THEIR RECORDS WERE INAC-
CURATE. HIS REASONS FOR NOT DOING SO WERE THAT HE HAD LOST IN-
TEREST IN THE UNION AND DID NOT HAVE TIME TO REPLY TO THE LETTER
OF AUGUST 9TH.

6. MR. BOLYKI TESTIFIED THAT HE GAVE MR. STANLEY A MEMBERSHIP
CARD TO SIGN. WHEN MR. STANLEY RETURNED THE SIGNED CARD TO HIM THE
CERTIFICATE OF PAYMENT OF THE INITIATION FEE WAS LEFT BLANK ON THE
FACE OF THE CARD AND MR. STANLEY ADVISED MR. BOLYKI THAT HE DID NOT
HAVE A \$1.00 BILL AT THAT TIME BUT PROMISED TO PAY THE INITIATION
FEE LATER. MR. BOLYKI FURTHER TESTIFIED THAT LATER THE SAME DAY,
DURING WORKING HOURS, MR. STANLEY PAID THE INITIATION FEE WITH THREE
QUARTERS, TWO DIMES AND ONE NICKEL. SOME TIME LATER, WHEN HE HAD AN
OPPORTUNITY TO DO SO, MR. BOLYKI FILLED IN THE AMOUNT OF THE INITIA-
TION FEE ON THE FACE OF THE CARD AND SIGNED THE CARD AS COLLECTOR.
MR. BOLYKI ALSO TESTIFIED THAT HE HAD ACTED AS COLLECTOR ON FIFTY-
SIX MEMBERSHIP APPLICATIONS. APPARENTLY, THERE WERE APPROXIMATELY
THIRTY OTHER OCCASIONS WHEN MR. BOLYKI SIGNED A CARD AS COLLECTOR
SOME TIME AFTER THE CARD AND THE MONEY WERE TURNED OVER TO HIM. HE
STATED THAT THIS PRACTICE WAS NECESSARY BECAUSE HE WAS TRYING TO
KEEP HIS ACTIVITIES SECRET AND THERE WAS NO TIME TO COMPLETE THE
CARD WHEN IT WAS RETURNED TO HIM ON THE RESPONDENT'S PREMISES.

7. THE APPLICANT'S MEMBERSHIP CARD HAS A DETACHABLE TEMPORARY
RECEIPT WHICH IS USUALLY GIVEN TO THE MEMBER AT THE TIME THE MEMBER
SIGNS THE CARD AND PAYS HIS INITIATION FEE. HOWEVER, MR. BOLYKI RE-
MOVED ALL THE TEMPORARY RECEIPTS FROM THE APPLICATION CARDS BEFORE
THEY WERE SIGNED. MR. STANLEY WAS NOT GIVEN A RECEIPT AT THE TIME
HE SIGNED HIS CARD. MR. BOLYKI TESTIFIED THAT THE TEMPORARY RECEIPTS
WERE SUBSEQUENTLY MAILED TO ALL MEMBERS. HOWEVER, MR. STANLEY TEST-
IFIED THAT HE NEVER RECEIVED A TEMPORARY RECEIPT BY MAIL, ALTHOUGH
HE ACKNOWLEDGED RECEIVING THE OFFICIAL RECEIPT WITH THE LETTER OF
AUGUST 9TH.

8. THE UNION ARGUED THAT THERE WAS AN ONUS ON THE INTERVENER
TO PROVE THAT IT WAS REASONABLY PROBABLE THAT MR. BOLYKI TRIED TO
COMMIT A FRAUD ON THE BOARD.

9. WHERE THE BOARD IS FACED WITH AN ALLEGATION OF NON-PAY,
THE BOARD, BECAUSE OF THE NATURE OF THE ALLEGATION, ADOPTS THE UN-

USUAL PROCEDURE OF ASSUMING THE CONDUCT OF THE INQUIRY. THE BOARD SUMMONSES THE WITNESSES WHO ARE KNOWN TO THE BOARD TO HAVE ANY KNOWLEDGE OF THE TRANSACTION AND THE BOARD CONDUCTS THE INITIAL EXAMINATION OF THESE WITNESSES. SINCE THESE WITNESSES ARE THE BOARD'S WITNESSES, ALL PARTIES HAVE A RIGHT TO CROSS-EXAMINE THE WITNESSES. HOWEVER, THE BOARD HAS NO ONUS ON IT TO ESTABLISH WHETHER THE MONEY WAS PAID OR NOT. ALL THE BOARD ATTEMPTS TO DO IS TO ASCERTAIN ALL THE FACTS RELATING TO THE TRANSACTION. THERE IS NO ONUS ON THE PERSON WHO BROUGHT THE NON-PAY TO THE ATTENTION OF THE BOARD SINCE THAT PERSON NEED NOT EVEN TAKE PART IN THE INQUIRY. IT IS THE BOARD'S INQUIRY, AND THE OTHER PARTIES MAY JOIN IN THE INQUIRY IN ANY MANNER THEY SEE FIT. ACCORDINGLY, THE ONLY ONUS WITH RESPECT TO THE INQUIRY INTO THE VALIDITY OF THE MEMBERSHIP EVIDENCE IS THE INITIAL ONUS ON THE APPLICANT WHICH IS TO ESTABLISH THAT ITS MEMBERSHIP EVIDENCE IS IN ORDER. THIS INITIAL ONUS ON THE APPLICANT IS NEITHER RELIEVED NOR INCREASED BY THE BOARD'S INQUIRY. THE BOARD MERELY ASSESSES ALL THE EVIDENCE AVAILABLE TO IT IN ORDER TO ASCERTAIN WHETHER THE FACTS STATED ON THE MEMBERSHIP DOCUMENT ARE SUBSTANTIALLY CORRECT.

10. HAVING REGARD TO ALL THE EVIDENCE IN THE INSTANT CASE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT THE FACTS STATED ON THE FACT OF THE MEMBERSHIP DOCUMENT SUBMITTED WITH RESPECT TO MR. STANLEY ARE NOT ACCURATE. AT THE TIME MR. STANLEY SIGNED THE CARD THE STATEMENT WHICH READS "I, THE UNDERSIGNED, CERTIFY THAT I PAID THE SUM OF \$.... ON THIS APPLICATION" WAS LEFT INCOMPLETE. THERE WAS ACCORDINGLY NO CERTIFICATION OF PAYMENT BY MR. STANLEY.

11. WE HAVE A CONFLICT IN TESTIMONY BETWEEN MR. STANLEY AND MR. BOLYKI CONCERNING A SUBSEQUENT PAYMENT OF THE INITIATION FEE BY MR. STANLEY, MR. STANLEY APPARENTLY LOST INTEREST IN JOINING THE UNION, BUT APART FROM THAT HE IS THE MORE DISINTERESTED OF THE TWO PERSONS WHO TESTIFIED WITH RESPECT TO THE MONEY PAYMENT. ON THE OTHER HAND, MR. BOLYKI ACKNOWLEDGED THAT HE ALTERED THE MEMBERSHIP CARD BY MAKING IT APPEAR THAT MR. STANLEY HAD CERTIFIED THAT THE MONEY WAS PAID. IN ADDITION, MR. BOLYKI CANDIDLY STATED THAT THERE WERE MANY OTHER INSTANCES WHERE HE SIGNED THE CARD AS COLLECTOR SOME TIME AFTER THE CARD WAS HANDED TO HIM. MR. BOLYKI ALSO TESTIFIED THAT HE WAS HURRIED AND UNDER PRESSURE AS A RESULT OF THE CIRCUMSTANCES UNDER WHICH THE CARDS WERE RECEIVED BY HIM AT WORK. MR. BOLYKI FURTHER DEPARTED FROM THE NORMAL PRACTICE OF GIVING A SIGNED RECEIPT AT THE TIME ANY MONEY WAS PAID TO HIM. AS A RESULT OF THESE FACTORS, WE ARE OF THE VIEW THAT THERE IS A GREATER POSSIBILITY OF ERROR ON THE PART OF MR. BOLYKI WHEN TESTIFYING CONCERNING THE SUBSEQUENT PAYMENT OF THE \$1.00 BY MR. STANLEY THAN THERE IS A POSSIBILITY OF AN ERROR ON THE PART OF MR. STANLEY THAT HE NEVER AT ANY TIME PAID HIS INITIATION FEE.

12. WE ACCORDINGLY PREFER THE EVIDENCE OF MR. STANLEY AND FIND THAT MR. STANLEY DID NOT PAY THE INITIATION FEE AS STATED ON THE FACE OF THE MEMBERSHIP CARD.

13. IN THE CIRCUMSTANCES DESCRIBED ABOVE, WE ARE UNABLE TO PLACE ANY RELIANCE ON THE MEMBERSHIP DOCUMENTS SUBMITTED BY THE APPLICANT ON WHICH MR. BOLYKI ACTED AS COLLECTOR.

14. IT SHOULD BE NOTED, HOWEVER, THAT THE EVIDENCE CONCERNING THE MANNER IN WHICH THE PERSONS WHO ACTED AS COLLECTORS WERE INSTRUCTED TO PROPERLY COMPLETE THE MEMBERSHIP CARDS AND THE FACT THAT THE LETTER OF AUGUST 9, 1971 WAS FORWARDED TO ALL PERSONS WHO SIGNED MEMBERSHIP CARDS, THAT THE APPLICANT'S OFFICIALS ARE NOT SUBJECT TO CRITICISM AS A RESULT OF THE NON-PAY OF MR. STANLEY. THE APPLICANT'S OFFICIALS DID ALL THAT THEY REASONABLY COULD TO ENSURE THAT THE EVIDENCE OF MEMBERSHIP SUBMITTED TO THE BOARD PROPERLY RECORDED THE FACTS PERTAINING TO THE PAYMENT OF MONEY.

15. WHILE ALL THE EVIDENCE OF MR. BOLYKI'S ACTIVITIES WOULD LEAD TO THE POSSIBILITY OF CONFUSION, WE DID NOT BELIEVE THAT MR. BOLYKI INTENTIONALLY SET OUT TO MISLEAD THE BOARD. WE ARE OF THE VIEW THAT MR. BOLYKI, BECAUSE OF THE HAPHAZARD MANNER IN WHICH HE SIGNED CARDS ON THE RESPONDENT'S PREMISES, CREATED CONFUSION IN HIS OWN MIND WITH RESPECT TO THE PAYMENT OF THE INITIATION FEE BY MR. STANLEY. MR. STANLEY SHOULD HAVE REPLIED TO THE APPLICANT'S LETTER OF AUGUST 9, 1971. IN CASES WHERE WE ARE NOT FACED WITH THE EVIDENCE OF CONFUSION SURROUNDING THE COLLECTOR'S ACTIVITIES, A FAILURE TO REPLY TO A LETTER IN THE FORM OF THE LETTER OF AUGUST 9TH MIGHT CAUSE THE BOARD TO DISBELIEVE AN EMPLOYEE'S DENIAL THAT HE HAD PAID THE INITIATION FEE.

16. HOWEVER, AS STATED ABOVE, ON THE FACTS BEFORE US IN THIS CASE, WE ARE NOT PREPARED TO GIVE EFFECT TO THE MEMBERSHIP EVIDENCE SUBMITTED BY THE APPLICANT WHERE MR. BOLYKI ACTED AS COLLECTOR.

17. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) (FORMERLY SECTION 1(1)(J)) OF THE LABOUR RELATIONS ACT.

18. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

19. THE BOARD IS NOT SATISFIED THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT WERE MEMBERS OF THE APPLICANT AT THE TIME THE APPLICATION WAS MADE.

20. THE APPLICATION IS ACCORDINGLY DISMISSED.

21. THE REGISTRAR WILL DESTROY THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE TAKEN IN THIS MATTER FOLLOWING THE EXPIRATION OF 30 DAYS FROM THE DATE OF THIS DECISION UNLESS A STATEMENT REQUESTING THAT THE BALLOTS SHOULD NOT BE DESTROYED IS RECEIVED BY THE BOARD FROM ONE OF THE PARTIES BEFORE THE EXPIRATION OF SUCH 30 DAY PERIOD.

775-71-M: CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY, ON BEHALF OF LOCAL UNIONS 27, 666, 681, 1133, 1747, 1963, 3227 AND 3233 OF THE UNITED BROTHERHOOD OF CARPENEERS AND JOINERS OF AMERICA (COUNCIL OF TRADE UNIONS) V. ELLIS-DON LIMITED (EMPLOYER).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG AND F. LEGER FOR THE COUNCIL OF TRADE UNIONS; B. W. BINNING AND G. A. BECIGNEUL FOR THE EMPLOYER.

DECISION OF THE BOARD: SEPTEMBER 8, 1971.

1. THIS IS A REFERENCE BY THE MINISTER TO THE ONTARIO LABOUR RELATIONS BOARD PURSUANT TO SECTION 79A OF THE ACT AS TO WHETHER THE MINISTER OF LABOUR HAS THE AUTHORITY UNDER SECTION 34(4) OF THE LABOUR RELATIONS ACT TO APPOINT A NOMINEE FOR THE EMPLOYER ON A BOARD OF ARBITRATION.

2. THE RELEVANT FACTS MAY BE SUMMARIZED AS FOLLOWS. A GRIEVANCE IN WRITING DATED MARCH 11, 1971 WAS FILED BY THE COUNCIL OF TRADE UNIONS ON BEHALF OF TWO EMPLOYEES ALLEGING VIOLATION OF ARTICLE #2 OF THE COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE PARTIES. THE SAID ARTICLE PROVIDES INTER ALIA, THAT "THE EMPLOYER AGREES TO ENGAGE ONLY SUB-CONTRACTORS WHO EMPLOY MEMBERS OF THE CARPENTERS UNION." IT WAS CONCEDED BY THE EMPLOYER THAT CERTAIN WORK WAS SUB-CONTRACTED TO ACME LATHING CO. LTD. WHO IN TURN EMPLOYED LATHERS WHO ARE NOT MEMBERS OF THE CARPENTERS UNION. AS OF THE DATE OF THE HEARING OF THIS MATTER ON AUGUST 24, 1971, NO COMPLAINT HAS BEEN FILED WITH THE BOARD PURSUANT TO THE JURISDICTIONAL DISPUTES PROVISIONS OF SECTION 66 OF THE ACT.

3. IT IS THE EMPLOYER'S SUBMISSION THAT THE MATTER INVOLVES A JURISDICTIONAL DISPUTE BETWEEN THE CARPENTERS AND LATHERS AND CONSEQUENTLY SHOULD BE PROCESSED UNDER THE PROVISIONS OF SECTION 66 OF THE ACT, ESPECIALLY IN LIGHT OF THE RECENT AMENDMENTS TO THIS SECTION WHICH EXTENDED ITS SCOPE. IT IS FURTHER CONTENDED THAT ANY

ARBITRATION BOARD SET UP IN THIS REGARD WOULD, IF IT ACCEPTED THE COUNCIL'S INTERPRETATION OF THE ARTICLE, AFFECT THE RIGHTS OF A NON PARTY TO THE COLLECTIVE AGREEMENT, VIS THE LATHERS, WITHOUT THE RIGHT OF THE LATTER TO MAKE REPRESENTATIONS IN THE MATTER. IT IS THEREFORE SUBMITTED THAT ONLY THE ONTARIO LABOUR RELATIONS BOARD HAS THE NECESSARY MACHINERY TO DEAL WITH THE MATTER PURSUANT TO SECTION 66 OF THE ACT.

4. HAVING REGARD TO THESE CIRCUMSTANCES AND UPON HEARING THE REPRESENTATIONS OF THE PARTIES, WE FIND THAT THE EXISTENCE OF A CONCURRENT REMEDY UNDER SECTION 66 OF THE ACT (WHICH HAD NOT BEEN SOUGHT BY EITHER PARTY AS OF THE TIME OF THIS HEARING) DOES NOT PRECLUDE A BOARD OF ARBITRATION FROM DEALING WITH THE ISSUE IN DISPUTE PURSUANT TO SECTION 34(1) OF THE ACT. IN OUR OPINION, THE VALIDITY OF THE COLLECTIVE AGREEMENT HAVING BEEN PROVEN, AN ISSUE HAS BEEN PROPERLY RAISED ARISING FROM "THE INTERPRETATION, APPLICATION ADMINISTRATION OR ALLEGED VIOLATION OF THE ARGUMENT, INCLUDING ANY QUESTION AS TO WHETHER THE MATTER IS ARBITRABLE."

5. IN LIGHT OF ALL OF THE FOREGOING, THE BOARD'S ANSWER TO THE QUESTION POSED BY THE MINISTER IS THAT THE MINISTER HAS THE AUTHORITY UNDER SUBSECTION (4) OF SECTION 34 OF THE ACT TO APPOINT A NOMINEE FOR THE EMPLOYEE ON A BOARD OF ARBITRATION.

815-71-R: CANADIAN MERCHANDISING EMPLOYEES' UNION (APPLICANT) V. JOFFRE LAPOINTE & SONS LIMITED (RESPONDENT) V. RETAIL CLERKS UNION, LOCAL 486 (INTERVENER).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND A. MAIN.

APPEARANCES AT THE HEARING: THOMAS L. REES AND KENNETH H. POWELL FOR THE APPLICANT, R. C. FILION FOR THE RESPONDENT, BARRY H. BAILY FOR THE INTERVENER.

DECISION OF THE BOARD: SEPTEMBER 3, 1971.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE APPLICANT APPLIED ON AUGUST 5, 1971 TO BE CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT.

2. THE APPLICANT PREVIOUSLY APPLIED TO BE CERTIFIED FOR THE SAME UNIT OF EMPLOYEES ON JULY 3, 1971 (BOARD FILE No. 704-71-R). THAT APPLICATION CAME ON FOR HEARING ON AUGUST 3, 1971 AND WAS DISMISSED WHEN THE APPLICANT FAILED TO APPEAR AT THE HEARING.

3. AT THE HEARING IN THE INSTANT CASE MR. REES, THE PRESIDENT OF THE APPLICANT, STATED THAT HE HAD FAILED TO APPEAR AT THE FIRST HEARING BECAUSE HE HAD ERRED WHEN HE ENTERED THE DATE FOR THAT HEARING IN HIS DIARY.

4. FOLLOWING THE DISMISSAL OF THE FIRST APPLICATION ON AUGUST 3, 1971 THE APPLICANT RE-APPLIED ON AUGUST 5, 1971. THE TERMINAL DATE FIXED FOR THE INSTANT APPLICATION WAS AUGUST 16, 1971.

5. BY REGISTERED LETTER DATED AUGUST 16, 1971 THE APPLICANT WROTE TO THE BOARD AS FOLLOWS:

RE: CM.E.U., AND JOFFRE LAPOINTE & SONS
LIMITED, AND RETAIL CLERKS UNION,
LOCAL 486: YOUR FILE NOS: 816-71-R
& 815-71-R:

PLEASE TRANSFER COMBINATION APPLICATION
MEMBERSHIP CARDS FILED IN APPLICATIONS UNDER
FILE NOS: 704-71-R AND 705-71-R, TO THE ABOVE
NAMED APPLICATIONS.

THANK YOU FOR YOUR COOPERATION IN THIS
MATTER.

6. THE COMBINATION APPLICATION FOR MEMBERSHIP AND RECEIPT CARDS WHICH HAD BEEN FILED IN THE FIRST APPLICATION WERE TRANSFERRED TO THIS FILE IN ACCORDANCE WITH THE APPLICANT'S REQUEST.

7. THE APPLICANT ALSO FORWARDED BY REGISTERED MAIL ON AUGUST 16TH A COPY OF FORM 8 (DECLARATION CONCERNING MEMBERSHIP DOCUMENTS) COVERING "DOCUMENTARY EVIDENCE OF MEMBERSHIP ON BEHALF OF ONE ADDITION PERSON ..." THE APPLICANT FILED ONE ADDITIONAL APPLICATION FOR MEMBERSHIP CARD IN ADDITION TO THOSE TRANSFERRED FROM FILE NO. 704. HOWEVER, THE APPLICANT FAILED TO FILE A COPY OF FORM 8 COVERING THE MEMBERSHIP DOCUMENTS WHICH WERE TRANSFERRED FROM FILE NO. 704.

8. SINCE THE APPLICANT FAILED TO FILE A COPY OF FORM 8 IN SUPPORT OF THE FOUR TRANSFERRED MEMBERSHIP DOCUMENTS, THAT EVIDENCE OF MEMBERSHIP FAILS TO MEET THE BOARD'S REQUIREMENTS. THE BOARD IS THEREFORE SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN ANY BARGAINING UNIT WHICH THE BOARD MIGHT DEEM TO BE APPROPRIATE, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON AUGUST 16, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, INDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCER-

TAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. THIS APPLICATION IS ACCORDINGLY DISMISSED.

10. THE RESPONDENT HAS REQUESTED THAT THE BOARD IMPOSE A BAR ON A NEW APPLICATION BY THE APPLICANT FOR THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED ON THE GROUNDS THAT THE RESPONDENT SHOULD NOT BE PUT TO THE ADDITIONAL EXPENSE OF ATTENDING A HEARING AT TORONTO FOR A THIRD TIME. THE APPLICANT IN THIS MATTER HAS ALSO APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR THE PART-TIME EMPLOYEES OF THE RESPONDENT AND THAT APPLICATION WAS HEARD AT THE SAME TIME AS THE INSTANT APPLICATION. IN THAT APPLICATION THE BOARD HAS DIRECTED THAT A REPRESENTATION VOTE BE TAKEN. IN VIEW OF THE FACT THAT THE RESPONDENT WAS REQUIRED TO ATTEND THE HEARING FOR THE APPLICATION CONCERNING THE PART-TIME EMPLOYEES, NO ADDITIONAL EXPENSE WAS INCURRED BY THE RESPONDENT TO ATTEND THE HEARING IN THIS MATTER.

11. THE RESPONDENT'S REQUEST THAT THE BOARD IMPOSE A BAR ON FUTURE APPLICATIONS BY THE APPLICANT IS ACCORDINGLY DENIED. IT SHOULD BE NOTED, HOWEVER, THAT THE BOARD'S POWER TO IMPOSE A BAR ON SUBSEQUENT APPLICATIONS PURSUANT TO THE PROVISIONS OF SECTION 92(2) (1) OF THE ACT MUST BE EXERCISED JUDICIOUSLY. IT CANNOT BE EXERCISED TO PUNISH A PARTY EVEN WHERE THAT PARTY HAS THROUGH LACK OF CARE AND ATTENTION MADE A BONA FIDE MISTAKE WHICH CREATES EXPENSE FOR ANOTHER PARTY. THE QUESTION OF EXPENSE MIGHT PROPERLY BE DEALT WITH BY THE IMPOSITION OF COSTS AGAINST AN UNSUCCESSFUL PARTY. HOWEVER, THE BOARD HAS NO JURISDICTION TO IMPOSE COSTS ON AN UNSUCCESSFUL PARTY.

783-71-M: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. FORD MOTOR COMPANY OF CANADA, LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

DECISION OF THE BOARD: AUGUST 31, 1971.

1. THIS IS AN APPLICATION UNDER SECTION 79(2) OF THE LABOUR RELATIONS ACT IN WHICH THE BOARD ON AUGUST 10, 1971 APPOINTED AN EXAMINER TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF JIM SWALWELL AND FRED CLARKE.

2. THE RESPONDENT HAS REQUESTED THE BOARD TO POSTPONE THE EXAMINER'S INQUIRY PENDING THE RESULT OF AN ARBITRATION HEARING WHICH HAS BEEN SCHEDULED TO DETERMINE WHETHER MESSRS. SWALWELL AND CLARKE ARE "COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES".

3. THE ISSUE AS TO WHETHER MESSRS. SWALWELL AND CLARKE ARE COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES IS NOT THE SAME ISSUE AS TO WHETHER THEY ARE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE ACT. ALTHOUGH IT MAY BE THAT IF THE BOARD DETERMINES THAT THE DISPUTED PERSONS ARE EMPLOYEES FOR THE PURPOSES OF THE ACT SUCH DECISION MIGHT RESOLVE THE DISPUTE BETWEEN THE PARTIES, HOWEVER THIS IS NOT NECESSARILY SO. THE BARGAINING UNIT IN QUESTION MAY BE FOR THE PRODUCTION EMPLOYEES AND THE TWO DISPUTED PERSONS MAY BE OFFICE EMPLOYEES OF THE RESPONDENT. IF SUCH IS THE CASE, THE TWO PERSONS MAY BE EMPLOYEES FOR THE PURPOSES OF THE ACT BUT NOT EMPLOYEES COVERED BY THE COLLECTIVE AGREEMENT FOR THE PRODUCTION EMPLOYEES.

4. SINCE THE TWO ISSUES ARE NOT IDENTICAL, THE BOARD IS OF THE VIEW THAT THE FACT THAT AN ARBITRATION HEARING IS PENDING WITH RESPECT TO THE DISPUTED PERSONS DOES NOT PRECLUDE THE BOARD FROM EXERCISING ITS JURISDICTION UNDER THE ACT TO DETERMINE WHETHER OR NOT THE DISPUTED PERSONS ARE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

5. THE RESPONDENT'S REQUEST FOR A STAY OF PROCEEDINGS IN THIS MATTER IS ACCORDINGLY DENIED.

718-71-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) v. RALPH MILROD METAL PRODUCTS LIMITED (RESPONDENT) v. RALPH MILROD METAL PRODUCTS EMPLOYEES' ASSOCIATION (INTERVENER).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: T.E. ARMSTRONG, D. MCCARTHY, W. FRASER AND ROBERT McMILLAN FOR THE APPLICANT; ROBERT A. MACDERMID AND LLOYD TEMPLE FOR THE RESPONDENT; E.G. POSEN, JOHN THOMSON AND GEORGE JONES FOR THE INTERVENER.

DECISION OF THE BOARD: SEPTEMBER 13, 1971.

1. THE NAME "RALPH MILROD METAL PRODUCTS, LIMITED" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "RALPH MILROD METAL PRODUCTS LIMITED".

2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

3. HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES THE BOARD

FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT MISSISSAUGA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. FOR THE PURPOSE OF CLARITY THE BOARD NOTES THAT THE DRAFTSMEN EMPLOYED IN THE ENGINEERING DEPARTMENT ARE NOT INCLUDED IN THE BARGAINING UNIT.

5. THE RESPONDENT AND THE INTERVENER SUBMITTED THAT THE INTERVENER HELD BARGAINING RIGHTS FOR THE EMPLOYEES IN THE AFORESAID BARGAINING UNIT. THE INTERVENER REQUESTS THAT ITS NAME BE PLACED ON THE BALLOT IN ANY REPRESENTATION ELECTION THAT THE BOARD MAY HOLD. THE REASONS FOR ITS REQUEST ARE AS FOLLOWS: THE INTERVENER WAS CERTIFIED BY THIS BOARD IN 1963 FOR ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO WITH CERTAIN EXCEPTIONS NOT HERE MATERIAL. THE RESPONDENT INDICATED THAT IT MOVED ITS PLANT FROM METROPOLITAN TORONTO TO MISSISSAUGA AND THAT THE PARTIES DID NOT AMEND THE AGREEMENT TO INCORPORATE THE CHANGES RESULTING FROM THE MOVE TO MISSISSAUGA. THE RESPONDENT SUBMITTED THAT THE PARTIES CONTINUED TO PURSUE THE SPIRIT OF THE AGREEMENT AT MISSISSAUGA. THE AGREEMENT TERMINATED ON AUGUST 31, 1971.

6. THE LABOUR RELATIONS ACT SECTION 1(1)(E) DEFINES A COLLECTION AGREEMENT AS "AN AGREEMENT IN WRITING..." IN THIS CASE THERE IS NO COLLECTIVE AGREEMENT IN WRITING WITH RESPECT TO THE EMPLOYEES OF THE RESPONDENT AT MISSISSAUGA. THE PURPOSE OF REQUIRING THE COLLECTIVE AGREEMENT TO BE IN WRITING IS TO ENABLE THE EMPLOYEES, THE TRADE UNION AND THE EMPLOYER, AND ANY OTHER INTERESTED PARTIES TO BE CERTAIN OF THEIR RIGHTS AND OBLIGATIONS AND TO AVOID THE TYPE OF SITUATION THAT HAS ARISEN IN THIS CASE. FURTHER, THE PARTIES DID NOT SUBMIT EVIDENCE AND CLAIM RECTIFICATION AS WAS DONE IN UNITED STEELWORKERS OF AMERICA V. WATERLOO METAL STAMPINGS LTD. V. INTERNATIONAL UNION OF DOLL AND TOY WORKERS OF THE UNITED STATES AND CANADA, 1969 AUGUST, OLRB MTHLY. REP. 630. IN THESE CIRCUMSTANCES WE ARE NOT PREPARED TO RECOGNIZE THAT THE INTERVENER HAS BARGAINING RIGHTS AT MISSISSAUGA AND THE REQUEST THAT THE NAME OF THE INTERVENER APPEAR ON THE BALLOT IS DENIED.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON AUGUST 12, 1971 THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

9. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE APPLICANT IN THEIR EMPLOYMENT RELATIONS WITH THE RESPONDENT.

10. THE MATTER IS REFERRED TO THE REGISTRAR.

816-71-R: CANADIAN MERCHANDISING EMPLOYEES' UNION (APPLICANT) V. JOFFRE LAPOINTE & SONS LIMITED (RESPONDENT) V. RETAIL CLERKS UNION, LOCAL 486 (INTERVENER).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND A. MAIN.

APPEARANCES AT THE HEARING: THOMAS L. REES AND KENNETH H. POWELL FOR THE APPLICANT, R. C. FILION FOR THE RESPONDENT, BARRY H. BAILY FOR THE INTERVENER.

DECISION OF THE BOARD: SEPTEMBER 3, 1971.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE APPLICANT APPLIED ON AUGUST 5, 1971 TO BE CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT.

2. THE APPLICANT PREVIOUSLY APPLIED TO BE CERTIFIED FOR THE SAME UNIT OF EMPLOYEES ON JULY 3, 1971 (BOARD FILE NO. 705-71-R). THAT APPLICATION CAME ON FOR HEARING ON AUGUST 3, 1971 AND WAS DISMISSED WHEN THE APPLICANT FAILED TO APPEAR AT THE HEARING.

3. AT THE HEARING IN THE INSTANT CASE MR. REES, THE PRESIDENT OF THE APPLICANT, STATED THAT HE HAD FAILED TO APPEAR AT THE FIRST HEARING BECAUSE HE HAD ERRED WHEN HE ENTERED THE DATE FOR THAT HEARING IN HIS DIARY.

4. FOLLOWING THE DISMISSAL OF THE FIRST APPLICATION ON AUGUST 3, 1971 THE APPLICANT RE-APPLIED ON AUGUST 5, 1971. THE TERMINAL DATE FIXED FOR THE INSTANT APPLICATION WAS AUGUST 16, 1971.

5. BY REGISTERED LETTER DATED AUGUST 16, 1971 THE APPLICANT WROTE TO THE BOARD AS FOLLOWS:

RE: CM.E.U., AND JOFFRE LAPOINTE & SONS
LIMITED, AND RETAIL CLERKS UNION,
LOCAL 486: YOUR FILE NOS: 816-71-R
& 815-71-R:

PLEASE TRANSFER COMBINATION APPLICATION
MEMBERSHIP CARDS FILED IN APPLICATIONS UNDER
FILE NOS: 704-71-R AND 705-71-R, TO THE ABOVE
NAMED APPLICATIONS.

THANK YOU FOR YOUR COOPERATION IN THIS
MATTER.

6. THE COMBINATION APPLICATION FOR MEMBERSHIP AND RECEIPT CARDS WHICH HAD BEEN FILED IN THE FIRST APPLICATION WERE TRANSFERRED TO THIS FILE IN ACCORDANCE WITH THE APPLICANT'S REQUEST.

7. THE APPLICANT ALSO FORWARDED BY REGISTERED MAIL ON AUGUST 16TH A COPY OF FORM 8 (DECLARATION CONCERNING MEMBERSHIP DOCUMENTS) COVERING "DOCUMENTARY EVIDENCE OF MEMBERSHIP ON BEHALF OF TWO ADDITIONAL PERSONS ...". THE APPLICANT FILED TWO ADDITIONAL APPLICATION FOR MEMBERSHIP CARDS IN ADDITION TO THOSE TRANSFERRED FROM FILE NO. 705. HOWEVER, THE APPLICANT FAILED TO FILE A COPY OF FORM 8 COVERING THE MEMBERSHIP DOCUMENTS WHICH WERE TRANSFERRED FROM FILE NO. 705.

8. SINCE THE APPLICANT FAILED TO FILE A COPY OF FORM 8 IN SUPPORT OF THE FOUR TRANSFERRED MEMBERSHIP DOCUMENTS, THAT EVIDENCE OF MEMBERSHIP FAILS TO MEET THE BOARD'S REQUIREMENTS.

. . .

15. AT THE HEARING IN THIS MATTER THE APPLICANT BY LETTER DATED AUGUST 31, 1971 MADE CERTAIN ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT AGAINST THE RESPONDENT AND THE INTERVENER.

16. THE TIMELINESS OF THESE ALLEGATIONS WAS CHALLENGED AND THE APPLICANT'S EXPLANATION FOR THE LATE FILING OF THE ALLEGATIONS WAS THAT THE PRESIDENT OF THE APPLICANT WAS OUT OF THE PROVINCE UNTIL THE DAY BEFORE THE HEARING IN THIS MATTER AND THAT THESE MATTERS CAME TO HIS ATTENTION FOR THE FIRST TIME ON HIS RETURN.

17. WHILE IT MAY BE THAT THE PRESIDENT OF THE APPLICANT HAS ASSUMED THE BULK OF THE RESPONSIBILITY IN ADMINISTERING THE AFFAIRS OF THE APPLICANT, IT IS NOTED THAT KENNETH H. POWELL, THE SECRETARY-TREASURER OF THE APPLICANT, FILED FORM 8 (DECLARATION CONCERNING MEMBERSHIP DOCUMENTS). THERE WAS NOTHING TO PREVENT MR. POWELL

FROM MAKING THE ALLEGATIONS WHICH THE PRESIDENT OF THE APPLICANT MADE IN HIS LETTER OF AUGUST 31ST. IN ADDITION, THERE WAS NO EXPLANATION AS TO WHY THESE ALLEGATIONS DID NOT COME TO THE ATTENTION OF OTHER OFFICERS OR OFFICIALS OF THE APPLICANT AT AN EARLIER DATE.

18. IN VIEW OF THESE CIRCUMSTANCES, THE BOARD FINDS THAT THE APPLICANT HAS NOT SATISFIED THE ONUS ON IT TO MAKE THE NECESSARY INQUIRIES AND TO FILE A NOTICE OF ITS INTENTION TO ALLEGE IMPROPER OR IRREGULAR CONDUCT PROMPTLY.

19. ACCORDINGLY, SINCE THE BOARD IS OF OPINION THAT THE APPLICANT FAILED TO ACT PROMPTLY, THE BOARD, PURSUANT TO THE PROVISIONS OF SECTION 47(2) OF THE BOARD'S RULES OF PROCEDURE, IS NOT PREPARED TO PERMIT THE APPLICANT TO ADDUCE ANY EVIDENCE IN SUPPORT OF ITS ALLEGATIONS.

20. THE MATTER IS REFERRED TO THE REGISTRAR.

688-71-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. WOODWAY STRUCTURAL COMPONENTS (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

DECISION OF THE BOARD: SEPTEMBER 8, 1971.

PARAGRAPH 12 OF THE BOARD'S DECISION OF AUGUST 31, 1971 IS DELETED AND THE FOLLOWING SUBSTITUTED THEREFOR:

HAVING DEALT WITH THE PRELIMINARY QUESTION OF ONUS RAISED BY COUNSEL FOR THE APPLICANT, THE BOARD DIRECTS THAT THE REGISTRAR LIST THIS MATTER FOR CONTINUATION OF HEARING FOR THE PURPOSE OF AFFORDING THE APPLICANT AND THE RESPONDENT AN OPPORTUNITY TO ADDUCE EVIDENCE AND MAKE REPRESENTATIONS AS TO WHETHER THERE HAS BEEN A SALE OF THE BUSINESS OF ENGINEERING TIMBER PRODUCTS, A DIVISION OF GLULAM PRODUCTS LIMITED TO WOODWAY STRUCTURAL COMPONENTS WITHIN THE MEANING OF SECTION 55 (FORMERLY 47A OF THE ACT).

CASE LISTINGS SEPTEMBER 1971

	PAGE
1. CERTIFICATION	
(A) BARGAINING AGENTS CERTIFIED	199
(B) APPLICATIONS DISMISSED	210
(C) APPLICATIONS WITHDRAWN	214
2. APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS	215
3. APPLICATION FOR DECLARATION OF SUCCESSOR STATUS	218
4. APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL	218
5. APPLICATIONS FOR CONSENT TO PROSECUTE	219
6. COMPLAINTS UNDER SECTION 79 (FORMERLY S. 65) (UNFAIR LABOUR PRACTICE)	220
7. JURISDICTIONAL DISPUTE	221
8. APPLICATIONS FOR DETERMINATION UNDER SECTION 95(2) (FORMERLY S. 79(2))	222
9. REFERENCES TO BOARD PURSUANT TO SECTION 96 (FORMERLY S. 79A)	222

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING SEPTEMBER 1971

BARGAINING AGENTS CERTIFIED DURING SEPTEMBER

NO VOTE CONDUCTED

111-70-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. ONTARIO BUILDING MATERIALS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (29 EMPLOYEES IN THE UNIT).

328-71-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION LOCAL NO. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. R. T. CONSTRUCTION (RESPONDENT) V. LOCAL UNION 494 UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, OFFICE AND SALES STAFF, AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS." (2 EMPLOYEES IN THE UNIT).

(SEE DECISION [1971] OLRB REP. 593).

472-71-R: CARPENTERS LOCAL 249 KINGSTON ONT. (APPLICANT) V. ACME LATHING COMPANY LIMITED (RESPONDENT) V. WOOD, WIRE & METAL LATHERS INTERNATIONAL UNION LOCAL 562 (INTERVENER).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FORMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

473-71-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. MACLEODS, A DIVISION OF MACLEOD STEDMAN LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT DRYDEN, SAVE AND EXCEPT STORE MANAGER AND PERSONS ABOVE THE RANK OF STORE MANAGER." (10 EMPLOYEES IN THE UNIT).

(SEE DECISION [1971] OLRB REP. 599).

485-71-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. K-MART FOODS LIMITED (RESPONDENT).

UNIT: "ALL MEAT DEPARTMENT EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORE IN THE TOWNSHIP OF KINGSTON, SAVE AND EXCEPT MEAT MANAGER, PERSONS ABOVE THE RANK OF MEAT MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (6 EMPLOYEES IN THE UNIT).

608-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. GREENWIN PROPERTY MANAGEMENT (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT "TOWER HOIST" OR "HOIST ELEVATOR" ARE INCLUDED IN THE TERM "SIMILAR EQUIPMENT".).

609-71-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (APPLICANT) V. DOMTAR CONSTRUCTION MATERIALS LTD., ASPHALT DIVISION VAUGHAN PLANT (RESPONDENT) V. INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN VAUGHAN TOWNSHIP, SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, SALES AND OFFICE STAFF." (43 EMPLOYEES IN THE UNIT).

691-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 249 (APPLICANT) V. M. J. FINN CONST. LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ES-

COTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

791-71-R: THE LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 837 (APPLICANT) V. CENTRAL WINDOW CLEANING CO. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (5 EMPLOYEES IN THE UNIT).

796-71-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION LOCAL NO. 53 AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. ALL SEASON HEATING COMPANY (RESPONDENT).

UNIT: "ALL SHEET METAL WORKERS AND SHEET METAL APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

849-71-R: SERVICE EMPLOYEES UNION, LOCAL 204 AFFILIATED WITH THE S.E.I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. EXTENDICARE (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE BOROUGH OF SCARBOROUGH, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR FOR FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (41 EMPLOYEES IN THE UNIT).

855-71-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. SUNNYBROOK FOOD MARKET (KEELE) LIMITED (RESPONDENT) V. LOCAL 206 NATIONAL COUNCIL OF CANADIAN LABOUR (INTERVENER).

UNIT: "ALL WAREHOUSE STAFF OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER DATED JANUARY 1, 1971." (6 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES). (FOR THE

PURPOSE OF CLARITY THE BOARD NOTED THAT DRIVERS EMPLOYED AT THE WAREHOUSES ARE INCLUDED IN THE BARGAINING UNIT).

(SEE DECISION [1971] OLRB REP. 606).

856-71-R: OIL CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT) V. CHINOOK CHEMICALS CORPORATION LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SOMBRA, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS EMPLOYED ON A CO-OPERATIVE TRAINING BASIS WITH A RECOGNIZED UNIVERSITY OR COLLEGE." (17 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES). (THE BOARD FURTHER NOTED THE AGREEMENT OF THE PARTIES BEFORE THE EXAMINER THAT AS OF THE DATE OF THE APPLICATION THE RESPONDENT DID NOT HAVE ANY DRIVERS IN ITS EMPLOY).

861-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. DAWSON FUEL AND SUPPLY COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

869-71-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. GEORGE LANTHIER & FILS LIMITEE (RESPONDENT).

UNIT: "ALL DRIVER-SALESMEN OF THE RESPONDENT AT ALEXANDRIA, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (3 EMPLOYEES IN THE UNIT).

(SEE DECISION [1971] OLRB REP. 614).

871-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. PEACOCK CONTRACTING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIP-

MENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND PERSONS COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND A COUNCIL OF TRADE UNIONS ACTING AS REPRESENTATIVE AND AGENT OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 AND TEAMSTERS' LOCAL UNION NOS. 230 AND 91 READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, AND LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 247." (10 EMPLOYEES IN THE UNIT).

875-71-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. BELTON-QUINN LUMBER LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (6 EMPLOYEES IN THE UNIT).

877-71-R: SERVICE EMPLOYEES UNION, LOCAL 204 AFFILIATED WITH THE S.E.I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. CHELTENHAM NURSING HOME LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (71 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

880-71-R: BRICKLAYERS, MASONS & PLASTERERS INTERNATIONAL UNION OF AMERICA, LOCAL 13 (APPLICANT) V. LONG SAULT CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

881-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 2466 (APPLICANT) V. RICCARDO MASONRY LIMITED, GENERAL CONTRACTOR (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF RENFREW SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

887-71-R: READY-MIX, BUILDING SUPPLY, HYDRO & CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, TEAMSTERS LOCAL UNION No. 230 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. EAGLE STONE COMPANY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWN OF MARKHAM, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENT, EMPLOYED DURING THE SCHOOL VACATION PERIOD." (25 EMPLOYEES IN THE UNIT).

888-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION 183 (APPLICANT) V. MIZRAB CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS AND SHOP AND YARD EMPLOYEES." (5 EMPLOYEES IN THE UNIT).

905-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (APPLICANT) V. FASSEL CONSTRUCTION CO. LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

908-71-R: LITHOGRAPHERS & PHOTOENGRAVERS INTERNATIONAL UNION, LONDON LOCAL 247 (APPLICANT) V. COMMERCIAL PRINT-CRAFT LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL LITHOGRAPHERS, THEIR APPRENTICES AND HELPERS EMPLOYED IN THE ART, CAMERA, PLATE, STRIPPING AND PRESS DEPARTMENTS OF THE RESPONDENT AT WOODSTOCK, SAVE AND EXCEPT NON-WORKING FORMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND ON A CO-OPERATIVE TRAINING BASIS WITH A SCHOOL OR UNIVERSITY." (29 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

921-71-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. ARNOLD STEELE & ASSOCIATES LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS AND ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

922-71-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. SIMCOE MECHANICAL CONTRACTING LIMITED (RESPONDENT).

UNIT: "ALL PLUMBERS AND PLUMBERS' APPRENTICES, STEAMFITTERS AND STEAMFITTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY MILE RADIUS OF THE NORTH BAY POST OFFICE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

936-71-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 1687 (APPLICANT) V. PETRYNA ELECTRIC LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

938-71-R: INTERNATIONAL LEATHER GOODS, PLASTICS AND NOVELTY WORKERS' UNION, LOCAL 8 (APPLICANT) V. COPAK (TORONTO) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (41 EMPLOYEES IN THE UNIT).

954-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. CANADA CURB & GUTTER LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

957-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. LOUISBOURG CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN

AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (13 EMPLOYEES IN THE UNIT).

964-71-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. CANTEEN OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT OFFICE MANAGERS AND PERSONS ABOVE THE RANK OF OFFICE MANAGER." (7 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

972-71-R: INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS, LODGE #128 (APPLICANT) V. TRI CANADA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT 720 TRETHEWEY DRIVE IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (9 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

973-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (APPLICANT) V. THE GREAT WAR MEMORIAL HOSPITAL OF PERTH DISTRICT (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT AT PERTH, SAVE AND EXCEPT CHIEF ENGINEER AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (3 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

976-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. CALVIN MCCOY LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANS-
DOWNE, FRONT OF LEEDS AND LANS-
DOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

977-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. RULIFF GRASS CONSTRUCTION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND

LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

991-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1190 (APPLICANT) V. GAMBINI BROTHERS (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

993-71-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION #249 (APPLICANT) V. JOHN WHEELWRIGHT LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

APPLICATIONS CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

817-71-R: TEXTILE WORKERS UNION OF AMERICA, AFL-CIO-CLC (APPLICANT) V. HARDING CARPETS LIMITED (RESPONDENT) V. THE CANADIAN TEXTILE AND CHEMICAL UNION (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT COLLINGWOOD, SAVE AND EXCEPT FIXERS, ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, OFFICE STAFF AND OPERATING ENGINEERS." (266 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	258
NUMBER OF PERSONS WHO CAST BALLOTS	225
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	114
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	111

847-71-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. AKRON MANUFACTURING (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF MALAHIDE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING ON A CO-OPERATIVE TRAINING PROGRAM." (10 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	10
NUMBER OF PERSONS WHO CAST BALLOTS	10
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	6
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	3

APPLICATIONS CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

517-71-R: READY-MIX, BUILDING SUPPLY, HYDRO & CONSTRUCTION DRIVERS, WAREHOUSEMEN & HELPERS, TEAMSTERS LOCAL UNION No. 230, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. #232835 CONCRETE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS PREMISES IN ALBION TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	5
NUMBER OF PERSONS WHO CAST BALLOTS	5
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	4
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	1

600-71-R: SERVICE EMPLOYEES UNION, LOCAL 204 AFFILIATED WITH THE S.E.I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. ROCKCLIFFE NURSING HOME LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN SCARBOROUGH, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR

FOREMAN, OFFICE STAFF, PERSONS EMPLOYED FOR MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (2 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		2
NUMBER OF PERSONS WHO CAST BALLOTS	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0	

675-71-R: GENERAL DRIVERS LOCAL 989 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. HOFFMAN CONCRETE PRODUCTS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT COMPANY EMPLOYED AT OR WORKING OUT OF McNAB TOWNSHIP, SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (11 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		11
NUMBER OF PERSONS WHO CAST BALLOTS	11	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	8	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	3	

694-71-R: CANADIAN TELEPHONE EMPLOYEES' ASSOCIATION (APPLICANT) V. MAITLAND TELESERVICES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRUSSELS, SAVE AND EXCEPT THE GENERAL MANAGER AND PERSONS ABOVE THE RANK OF GENERAL MANAGER." (6 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		5
NUMBER OF PERSONS WHO CAST BALLOTS	5	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	5	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING SEPTEMBER

NO VOTE CONDUCTED

667-71-R: CANADA BONDWOOD EMPLOYEES' ASSOCIATION (APPLICANT) V. CANADA BONDWOOD LIMITED (RESPONDENT). (NO EMPLOYEES).

695-71-R: CANADIAN TELEPHONE EMPLOYEES' ASSOCIATION (APPLICANT) V. TELE-DIRECT LTD. (RESPONDENT). (277 EMPLOYEES).

801-71-R: CANADIAN MERCHANT SERVICE GUILD (APPLICANT) V. BOAT TOURS INTERNATIONAL LTD. (RESPONDENT). (18 EMPLOYEES).

810-71-R: THE BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA (APPLICANT) V. A. G. & SON CONTRACTORS (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (21 EMPLOYEES).

811-71-R: BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA, LOCAL #30 (APPLICANT) V. W. F. FLYNN PLASTERING LIMITED (RESPONDENT) V. OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION NO. 124, OTTAWA (INTERVENER). (2 EMPLOYEES).

815-71-R: CANADIAN MERCHANDISING EMPLOYEES' UNION (APPLICANT) V. JOFFRE LAPOINTE & SONS LIMITED (RESPONDENT) V. RETAIL CLERKS UNION, LOCAL 486 (INTERVENER). (7 EMPLOYEES).

(SEE DECISION [1971] OLRB REP. 621).

843-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. MARANER CONSTRUCTION LIMITED (RESPONDENT) V. COUNCIL OF CONCRETE FORMING TRADE UNIONS (INTERVENER #1) V. LOCAL 1190, UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (INTERVENER #2). (69 EMPLOYEES).

863-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. BARGE CONSTRUCTION LIMITED (RESPONDENT). (12 EMPLOYEES).

913-71-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL TIRONWORKERS, LOCAL UNION #765 (APPLICANT) V. C & M FENÊTRES & VITRAUX LTÉE (RESPONDENT). (4 EMPLOYEES).

915-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. RILLI BROTHERS FORMING LIMITED (RESPONDENT). (15 EMPLOYEES).

929-71-R: GENERAL TRUCK DRIVERS UNION, TEAMSTERS LOCAL UNION NO. 938, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. NU-CAR RELEASING CO. LTD. (RESPONDENT). (3 EMPLOYEES).

930-71-R: TEXTILE WORKERS UNION OF AMERICA, AFL-CIO-CLC (APPLICANT) V. NATIONAL KNITTING MILLS CO. LTD. (RESPONDENT). (321 EMPLOYEES).

931-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (APPLICANT) V. STEDS LIMITED (RESPONDENT). (12 EMPLOYEES).

934-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. CLAUDE MAINVILLE CONSTRUCTION (RESPONDENT). (6 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

826-71-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. A. G. SIMPSON COMPANY LIMITED (RESPONDENT) V. SIMPSON PLANT COUNCIL (INTERVENER).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (169 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED
VOTERS' LIST

172

NUMBER OF PERSONS WHO CAST BALLOTS

157

(BALLOT BOX SEALED)

(SEE DECISION [1971] OLRB REP. 615).

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

244-71-R: LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. C. T. McDONALD FOREST PRODUCTS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS SAWMILL AND PLANING MILL AT KENOGAMI, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (53 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED
VOTERS' LIST

45

NUMBER OF PERSONS WHO CAST BALLOTS

42

NUMBER OF BALLOTS MARKED IN FAVOUR
OF APPLICANT

10

NUMBER OF BALLOTS MARKED AGAINST
APPLICANT

32

409-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE TIMMINS DISTRICT ROMAN CATHOLIC SEPARATE SCHOOL BOARD (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT IN THE TIMMINS DISTRICT ROMAN CATHOLIC SEPARATE SCHOOL BOARD, SAVE AND EXCEPT THE SUPERINTENDENT OF BUSINESS, PERSONS ABOVE THE RANK OF SUPERINTENDENT OF BUSINESS AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (29 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	31
NUMBER OF PERSONS WHO CAST BALLOTS	25
NUMBER OF BALLOTS SEGREGATED AND NOT COUNTED	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	6
NUMBER OF BALLOTS AGAINST APPLICANT	18

528-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. TRENT UNIVERSITY (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PETERBOROUGH, EMPLOYED IN MAINTENANCE, SERVICES AND PLANT OPERATION, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND TECHNICAL STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (101 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	107
NUMBER OF PERSONS WHO CAST BALLOTS	102
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	47
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	55

677-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE DOCTOR JOSEPH O. RUDDY GENERAL HOSPITAL (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN WHITBY, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANKS OF SUPERVISOR AND FOREMAN, OFFICE AND CLERICAL STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN

24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE VACATION PERIOD." (58 EMPLOYEES IN THE UNIT). (THE BOARD FURTHER STATED IN ITS DECISION DATED AUGUST 9TH, 1971: FOR THE PURPOSES OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE TERM TECHNICAL PERSONNEL COMPRISES THE RESPECTIVE DEPARTMENTS AND CLASSIFICATIONS OF PHARMACY - TECHNICIAN, LABORATORY - TECHNOLOGIST, RADIOLOGY - TECHNOLOGIST, PHYSIOTHERAPY - PHYSIOTHERAPIST, PHYSIOTHERAPY - TECHNICIAN, E.C.G.).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		58
NUMBER OF PERSONS WHO CAST BALLOTS	47	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	22	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	25	

679-71-R: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT) V. PETROFINA CANADA LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT ITS HAMILTON MARINE TERMINAL, SAVE AND EXCEPT ASSISTANT SUPERINTENDENTS, PERSONS ABOVE THE RANK OF ASSISTANT SUPERINTENDENT, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (11 EMPLOYEES IN THE UNIT). (THE BOARD FURTHER STATED IN ITS DECISION DATED JULY 16TH, 1971: "... THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT TANK WAGON SALESMEN ARE INCLUDED IN THE BARGAINING UNIT.").

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		8
NUMBER OF PERSONS WHO CAST BALLOTS	8	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	6	

690-71-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. NORTH AMERICAN LIFE ASSURANCE COMPANY (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT AT ITS PREMISES IN METROPOLITAN TORONTO, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		5
NUMBER OF PERSONS WHO CAST BALLOTS	4	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	4	

697-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CORPORATION OF HURON COLLEGE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (16 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		3
NUMBER OF PERSONS WHO CAST BALLOTS	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	1	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	1	

850-71-R: CANADIAN MERCHANDISING EMPLOYEES' UNION (APPLICANT) V. NORBORD ENTERPRISES LIMITED CARRYING ON BUSINESS AS HONDA OF OTTAWA (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT STORE MANAGER AND PERSONS ABOVE THE RANK OF STORE MANAGER." (12 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		7
NUMBER OF PERSONS WHO CAST BALLOTS	7	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	7	

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING SEPTEMBER

836-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. PHILLIPS ACOUNSTIC SERVICES LTD. (RESPONDENT). (2 EMPLOYEES).

886-71-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. TOWNSHIP OF ATKOKAN PARKS & RECREATION DEPARTMENT (RESPONDENT). (25 EMPLOYEES).

906-71-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 880 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. SARNIA GENERAL HOSPITAL (RESPONDENT) V. LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U. A.F. of L., C.I.O., C.L.C. (INTERVENER). (NO EMPLOYEES).

914-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. MASTERCRAFT (RESPONDENT). (NO EMPLOYEES).

937-71-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. INTERCITY FOOD SERVICES INC. (RESPONDENT). (11 EMPLOYEES).

958-71-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. CROOKS REXALL PHARMACY (RESPONDENT). (58 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF

DURING SEPTEMBER

358-71-R: KURT GAYLE, OSBORNE BEST, CHRISTIPHIN ROLLINS, GLADYS PALMER, COLSTONE LOVELL (APPLICANTS) V. SERVICE EMPLOYEES' UNION, LOCAL 204 (RESPONDENT) V. TORONTO GENERAL HOSPITAL (INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES OF TORONTO GENERAL HOSPITAL EMPLOYED ON THE DATE HEREOF IN THE CLASSIFICATIONS SET OUT IN SCHEDULES OF JOB CLASSIFICATIONS AND WAGE RATES IN THE COLLECTIVE AGREEMENT MADE BETWEEN TORONTO GENERAL HOSPITAL AND SERVICE EMPLOYEES' UNION, LOCAL 204, A.F. of L., C.I.O., C.L.C., EFFECTIVE JUNE 1ST, 1970 AND EXPIRING MAY 31ST, 1971, SAVE AND EXCEPT PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (1057 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		1030
NUMBER OF PERSONS WHO CAST BALLOTS		748
NUMBER OF SPOILED BALLOTS	12	
BALLOTS SEGREGATED AND NOT COUNTED	4	
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	157	
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	575	

501-71-R: CLIVE R. DYKER (APPLICANT) V. RETAIL CLERKS UNION, LOCAL 206 (RESPONDENT). (GRANTED).

UNIT: "ALL RETAIL EMPLOYEES OF EAST MALL I.G.A. SAVE AND EXCEPT THE STORE MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS HIRED FOR THE SCHOOL VACATION PERIOD." (4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		4
NUMBER OF PERSONS WHO CAST BALLOTS	4	
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	0	
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	4	

560-71-R: EMPLOYEES OF KOHEN BOX COMPANY (WINDSOR) LIMITED (BOXING DIVISION) (APPLICANTS) V. MILLWORKERS' LOCAL #802, THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (RESPONDENT) V. KOHEN BOX COMPANY (WINDSOR) LIMITED (BOXING DIVISION) (INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES OF KOHEN BOX COMPANY (WINDSOR) LIMITED (BOXING DIVISION) AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, TIME-KEEPERS AND TIMESTUDY MEN." (68 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		40
NUMBER OF PERSONS WHO CAST BALLOTS	37	
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	2	
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	35	

681-71-R: RUTH MARTIN (APPLICANT) V. NURSES' ASSOCIATION ST. MARY'S GENERAL HOSPITAL KITCHENER, ONTARIO (RESPONDENT). (12 EMPLOYEES). (DISMISSED).

(SEE DECISION [1971] OLRB REP. 556).

773-71-R: EMPLOYEES OF GULF OIL OF CANADA (APPLICANT) V. OIL CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, LOCAL NO. 9-846 (RESPONDENT). (GRANTED).

UNIT: "ALL EMPLOYEES OF GULF OIL CANADA LIMITED AT THE CLARKSON (ONTARIO) MARKETING BRANCH SAVE AND EXCEPT DISPATCHERS, PERSONS ABOVE THE RANK OF DISPATCHER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR (24) HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (50 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		50
NUMBER OF PERSONS WHO CAST BALLOTS	46	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF RESPONDENT	17	
NUMBER OF BALLOTS MARKED AGAINST		
RESPONDENT	29	

807-71-R: THOMAS J. ROBSON (APPLICANT) V. INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA, AND AMALGAMATED PLANT GUARDS, LOCAL 1958 (RESPONDENT) V. DOW CHEMICAL OF CANADA, LIMITED (INTERVENER). (DISMISSED).

UNIT: "ALL EMPLOYEES OF DOW CHEMICAL OF CANADA, LIMITED AT SARNIA, SAVE AND EXCEPT SHIFT SERGEANTS, AND PERSONS ABOVE THE RANK OF SHIFT SERGEANT AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (17 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		18
NUMBER OF PERSONS WHO CAST BALLOTS	18	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF RESPONDENT	10	
NUMBER OF BALLOTS MARKED AGAINST		
RESPONDENT	8	

828-71-R: FRED WEPPLER, DONALD WRIGHT, BERNIE STEVENSON AND LARRY HAMEL (APPLICANTS) V. INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA AFL, CIO-CLC (RESPONDENT) V. SEVEN UP (ONTARIO) LIMITED (INTERVENER). (33 EMPLOYEES). (DISMISSED).

(SEE DECISION [1971] OLRB REP. 575).

851-71-R: DANIEL HASLER (APPLICANT) V. LOCAL 197 OF THE HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, A.F.L. C.I.O. C.L.C. (RESPONDENT). (GRANTED).

UNIT: "ALL TAPMEN AND WAITERS IN THE EMPLOY OF THE WESTDALE HOTEL IN HAMILTON, SAVE AND EXCEPT BEVERAGE ROOM MANAGER AND PERSONS ABOVE THE RANK OF BEVERAGE ROOM MANAGER." (6 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		9
NUMBER OF PERSONS WHO CAST BALLOTS	7	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF RESPONDENT	0	
NUMBER OF BALLOTS MARKED AGAINST		
RESPONDENT	7	

873-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. UNITED STEELWORKERS OF AMERICA (RESPONDENT) V. DELL CONSTRUCTION (SUDBURY) (INTERVENER #1) V. DELLELCE CONSTRUCTION AND EQUIPMENT (INTERVENER #2). (84 EMPLOYEES). (WITHDRAWN).

895-71-R: INDUSTRIAL-MINE INSTALLATIONS LIMITED (APPLICANT) V. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (RESPONDENT). (30 EMPLOYEES). (DISMISSED).

919-71-R: TED T. NAKAMICHI (APPLICANT) V. THE UNITED ELECTRICAL RADIO AND MACHINE WORKERS UNINN LOCAL 514 (RESPONDENT) V. AUTOMATIC RADIO OF CANADA LIMITED (INTERVENER). (38 EMPLOYEES). (GRANTED).

APPLICATION FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING

SEPTEMBER

940-71-R: THE INTERNATIONAL UNION UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (U.A.W.) AND ITS LOCAL 984 (APPLICANT) V. CANADIAN ACME SCREW & GEAR LIMITED, MONROE ACME LIMITED, MAREMONT ACME LIMITED AND MAECO SHOCK ABSORBER LTD. (RESPONDENTS). (WITHDRAWN).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

SEPTEMBER

476-71-U: GIULIANI CONSTRUCTION COMPANY LIMITED (APPLICANT) V. 1) MARBLE TILE & TERRAZZO MECHANICS UNION, LOCAL 31 2) THE INTERNATIONAL LABOURERS UNION OF NORTH AMERICA, LOCAL 506 (RESPONDENT). (WITHDRAWN).

605-71-U: DOMINION GLASS COMPANY LIMITED (APPLICANT) V. THOSE PERSONS NAMED IN SCHEDULE "A" ATTACHED HERETO (RESPONDENTS). (WITHDRAWN).

896-71-U: FRANK TAGGART & SON LTD. (APPLICANT) V. SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION LOCAL UNION 537 (RESPONDENT). (DISMISSED).

(SEE DECISION [1971] OLRB REP. 573).

898-71-U: FRANK TAGGART & SON LTD. (APPLICANT) V. SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION LOCAL UNION 537, EARL WEAVER, PERCY ROBERTS AND CHARLES LANDER (RESPONDENTS). (DISMISSED).

900-71-U: DURALL CONSTRUCTION LIMITED (APPLICANT) V. CLARENCE J. MASSIE AND EARL E. PECK (RESPONDENTS). (WITHDRAWN).

901-71-U: DURALL CONSTRUCTION LIMITED (APPLICANT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (RESPONDENT). (WITHDRAWN).

925-71-U: GALT METAL INDUSTRIES LIMITED (APPLICANT) V. THOSE PERSONS NAMED IN SCHEDULES "A" TO "C" ATTACHED HERETO (RESPONDENTS). (WITHDRAWN).

926-71-U: GALT METAL INDUSTRIES LIMITED (APPLICANT) V. THOSE PERSONS NAMED IN SCHEDULES "A" AND "B" ATTACHED HERETO (RESPONDENTS). (WITHDRAWN).

948-71-U: OMEGA CONSTRUCTION CANADA LTD. (APPLICANT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (RESPONDENT). (WITHDRAWN).

949-71-U: NORTH ATLANTIC FORMS LTD.-FORMCO INC., JOINT VENTURE (APPLICANT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (RESPONDENT). (WITHDRAWN).

979-71-U: ROBSON-LANG LEATHERS LIMITED (APPLICANT) V. GERALD BOUCHIE, LEOPOLD DUGUAY ET AL (RESPONDENTS). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING SEPTEMBER

477-71-U: GIULIANI CONSTRUCTION COMPANY LIMITED (APPLICANT) V. 1) EMOL LUBINSKI 2) MARBLE TILE & TERRAZZO MECHANICS UNION, LOCAL 31 3) MARINO TOPPAN 4) THE INTERNATIONAL LABOURERS UNION OF NORTH AMERICA, LOCAL 506 (RESPONDENTS). (WITHDRAWN).

602-71-U: DOMINION GLASS COMPANY LIMITED (APPLICANT) V. THOSE PERSONS NAMED IN SCHEDULE "A" ATTACHED HERETO (RESPONDENTS). (WITHDRAWN).

603-71-U: DOMINION GLASS COMPANY LIMITED (APPLICANT) V. THOSE PERSONS NAMED IN SCHEDULE "A" ATTACHED HERETO (RESPONDENTS). (WITHDRAWN).

606-71-U: DOMINION GLASS COMPANY LIMITED (APPLICANT) V. THOSE PERSONS NAMED IN SCHEDULE "A" ATTACHED HERETO (RESPONDENTS). (WITHDRAWN).

740-71-U: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. TEKPAK AUTOMATED SYSTEMS LIMITED (DISMISSED).

(SEE DECISION [1971] OLRB REP. 577).

772-71-U: V. K. MASON CONSTRUCTION LTD. (APPLICANT) V. ALEX MAIN, CLIVE BALLENTINE, TORONTO BUILDING AND CONSTRUCTION TRADES COUNCIL (RESPONDENTS). (WITHDRAWN).

793-71-U: CON-DRAIN COMPANY LIMITED (APPLICANT) V. LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 AND G. GALLAGHER (RESPONDENTS). (WITHDRAWN).

859-71-U: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. HOOKER CHEMICAL (NANAIMO) LIMITED (RESPONDENT). (WITHDRAWN).

902-71-U: DURALL CONSTRUCTION LIMITED (APPLICANT) V. JOHN H. REDSHAW (RESPONDENT). (WITHDRAWN).

903-71-U: DURALL CONSTRUCTION LIMITED (APPLICANT) V. GLEN MCLEOD (RESPONDENT). (WITHDRAWN).

904-71-U: DURALL CONSTRUCTION LIMITED (APPLICANT) V. CLARENCE J. MASSIE AND EARL E. PECK (RESPONDENTS). (WITHDRAWN).

912-71-U: DURALL CONSTRUCTION LIMITED (APPLICANT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (RESPONDENT). (WITHDRAWN).

927-71-U: GALT METAL INDUSTRIES LIMITED (APPLICANT) V. THOSE PERSONS NAMED IN SCHEDULE "A" ATTACHED HERETO (RESPONDENT). (WITHDRAWN).

950-71-U: OMEGA CONSTRUCTION CANADA LTD. (APPLICANT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (RESPONDENT). (WITHDRAWN).

951-71-U: NORTH ATLANTIC FORMS LTD.-FORMCO INC., JOINT VENTURE (APPLICANT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (RESPONDENT). (WITHDRAWN).

965-71-U: PRINTING SPECIALTIES & PAPER PRODUCTS UNION LOCAL 466 (APPLICANT) V. DATA BUSINESS FORMS LIMITED (RESPONDENT). (WITHDRAWN).

COMPLAINTS UNDER SECTION 79(FORMERLY S.65) (UNFAIR LABOUR PRACTICE)

DISPOSED OF DURING SEPTEMBER

18666-70-U: TORONTO MAILERS' UNION, NO. 5 (COMPLAINANT) V. TORONTO STAR LIMITED (RESPONDENT). (DISMISSED).

(SEE DECISION [1971] OLRB REP. 582).

494-71-U: KARL VATERLAUS (COMPLAINANT) V. WATERLOO METAL STAMPINGS LTD. (RESPONDENT). (DISMISSED).

529-71-U: TEXTILE WORKERS UNION OF AMERICA AFL-CIO-CLC (COMPLAINANT) V. FEDERAL PACKAGING AND PARTITION COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

573-71-U: ARTHUR IRWIN DUNKLEY (COMPLAINANT) V. SUPERIOR PIPELINE CONTRACTORS LIMITED AND LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (RESPONDENTS). (DISMISSED).

710-71-U: INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS (COMPLAINANT) V. GAGE STATIONERY LIMITED (RESPONDENT). (WITHDRAWN).

725-71-U: THE LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (COMPLAINANT) V.

LECOURS LUMBER CO. (RESPONDENT). (GRANTED).

(SEE DECISION [1971] OLRB REP. 607).

757-71-U: GENERAL DRIVERS LOCAL 989 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (COMPLAINANT) V. HOFFMAN CONCRETE PRODUCTS LTD. (RESPONDENT). (WITHDRAWN).

763-71-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V. BIRCHLAND VENEERS LIMITED (RESPONDENT). (WITHDRAWN).

778-71-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (COMPLAINANT) V. A. G. SIMPSON COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

784-71-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (COMPLAINANT) V. A. G. SIMPSON COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

864-71-U: WILLIAM CAMPBELL (COMPLAINANT) V. TEAMSTERS LOCAL 880 AND INTER CITY TRUCK LINE (RESPONDENTS). (WITHDRAWN).

883-71-U: IVAN LUKIC (COMPLAINANT) V. CARPENTERS AND JOINERS UNION LOCAL 494 (RESPONDENT). (WITHDRAWN).

984-71-U: TEXTILE WORKERS UNION OF AMERICA, AFL-CIO-CLC (COMPLAINANT) V. NATIONAL KNITTING MILLS CO. LTD. (RESPONDENT). (WITHDRAWN).

989-71-U: TEXTILE WORKERS UNION OF AMERICA, AFL-CIO-CLC (COMPLAINANT) V. NATIONAL KNITTING MILLS CO. LTD. (RESPONDENT). (WITHDRAWN).

JURISDICTIONAL DISPUTE

719-71-JD: THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, LOCAL 48 (COMPLAINANT) V. HEXAGON CONTRACTING LIMITED INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES LOCAL 1891 (RESPONDENTS).

(SEE DECISION [1971] OLRB REP. 554).

APPLICATIONS FOR DETERMINATION UNDER SECTION 95(2)(FORMERLY S. 79(2))DISPOSED OF DURING SEPTEMBER

582-71-M: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWN OF AURORA (RESPONDENT).

(SEE DECISION [1971] OLRB REP. 579).

673-71-M: SCARBOROUGH MUNICIPAL OFFICE EMPLOYEES UNION, LOCAL 545, C.U.P.E. (APPLICANT) V. THE CORPORATION OF THE BOROUGH OF SCARBOROUGH (RESPONDENT).

709-71-M: CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 967 (APPLICANT) V. CANADIAN STANDARDS ASSOCIATION (RESPONDENT). (DISMISSED).

REFERENCES TO BOARD PURSUANT TO SECTION 96(FORMERLY S.79A)

18912-70-M: GOLDSTEIN FOODMART LTD. (EMPLOYER) V. RETAIL CLERKS UNION, LOCAL ~~486~~ CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION (TRADE UNION) V. CANADIAN MERCHANDISING EMPLOYEES' UNION (INTERVENER).

775-71-M: CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINTIY, ON BEHALF OF LOCAL UNIONS 27, 666, 681, 1133, 1747, 1963, 3227 AND 3233 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (COUNCIL OF TRADE UNIONS) V. ELLIS-DON LIMITED (EMPLOYER).

(SEE DECISION [1971] OLRB REP. 620).

STATISTICAL TABLES FOR FIRST 6 MONTHS (APRIL - SEPTEMBER) FISCAL YEAR 1971-72TABLE IAPPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	2ND 3 MONTHS	1ST 6 MONTHS FISCAL YEAR	
	FISCAL YEAR 1971-72	1971-72	1970-71
I. CERTIFICATION	234	499	564
II. DECLARATION TERMINATING BARGAINING RIGHTS	19	43	44
III. DECLARATION OF SUCCESSOR STATUS	8	12	9
IV. DECLARATION THAT STRIKE UNLAWFUL	11	29	37
V. DECLARATION THAT LOCK-OUT UNLAWFUL	1	1	3
VI. CONSENT TO PROSECUTE	33	129	91
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	46	94	78
VIII. MISCELLANEOUS	<u>27</u>	<u>62</u>	<u>54</u>
TOTAL	<u>379</u>	<u>869</u>	<u>880</u>

TABLE IIHEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	2ND 3 MONTHS	1ST 6 MONTHS FISCAL YEAR	
	FISCAL YEAR 1971-72	1971-72	1970-71
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	259	491	583

TABLE IIIAPPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONSBOARD BY MAJOR TYPES

	NUMBER DISPOSED OF		
	2ND 3 MONTHS FISCAL YEAR 1971-72	1ST 6 MONTHS FISCAL YEAR	
		1971-72	1970-71
I. CERTIFICATION	189	448	621
II. DECLARATION TERMINATING BARGAINING RIGHTS	22	38	44
III. DECLARATION OF SUCCESSOR STATUS	2	6	7
IV. DECLARATION THAT STRIKE UNLAWFUL	15	30	40
V. DECLARATION THAT LOCK-OUT UNLAWFUL	1	2	4
VI. CONSENT TO PROSECUTE	85	120	99
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	41	78	81
VIII. MISCELLANEOUS	<u>31</u>	<u>61</u>	<u>59</u>
TOTAL	386	783	955
	==	==	==

TABLE IVAPPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARDBY TYPE AND DISPOSITION

	NUMBER OF APPLICATIONS			NUMBER OF EMPLOYEES*		
	2ND 3 MTHS	1ST 6 MTHS F.Y.		2ND 3 MTHS	1ST 6 MTHS F.Y.	
	FISCAL YEAR			FISCAL YEAR		
	1971-72	1971-72	1970-71	1971-72	1971-72	1970-71
I. <u>CERTIFICATION</u>						
GRANTED	122	274	418	2821	7844	12299
DISMISSED	51	139	144	1991	6170	4834
WITHDRAWN	<u>16</u>	<u>35</u>	<u>59</u>	<u>179</u>	<u>677</u>	<u>2253</u>
TOTAL	189	448	621	4991	14691	19386
	==	==	==	==	==	==
II. <u>TERMINATION</u> <u>OF BARGAINING</u> <u>RIGHTS</u>						
GRANTED	12	19	20	1421	1923	288
DISMISSED	6	13	17	111	303	1457
WITHDRAWN	<u>4</u>	<u>6</u>	<u>6</u>	<u>292</u>	<u>345</u>	<u>465</u>
TOTAL	22	38	43	1824	2571	2210
	==	==	==	==	==	==

*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARDBY TYPE AND DISPOSITION (CONTINUED)

		NUMBER OF APPLICATIONS		
		2ND 3 MONTHS FISCAL YEAR <u>1971-72</u>	1ST 6 MTHS FISCAL YEAR <u>1971-72</u>	<u>1970-71</u>
III.	<u>DECLARATION THAT STRIKE UNLAWFUL</u>			
	GRANTED	2	7	4
	DISMISSED	3	4	2
	WITHDRAWN	<u>12</u>	<u>21</u>	<u>34</u>
	TOTAL	17	32	40
		=	=	=
IV.	<u>DECLARATION THAT LOCKOUT UNLAWFUL</u>			
	GRANTED	-	-	-
	DISMISSED	1	2	2
	WITHDRAWN	<u>-</u>	<u>-</u>	<u>2</u>
	TOTAL	1	2	4
		=	=	=
V.	<u>CONSENT TO PROSECUTE</u>			
	GRANTED	7	23	25
	DISMISSED	59	62	16
	WITHDRAWN	<u>19</u>	<u>35</u>	<u>58</u>
	TOTAL	85	120	99
		=	=	=
VI.	<u>COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)</u>			
	GRANTED	7	12	8
	DISMISSED	11	21	22
	WITHDRAWN	<u>23</u>	<u>45</u>	<u>51</u>
	TOTAL	41	78	81
		=	=	=

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD

<u>CERTIFICATION AFTER VOTE*</u>	<u>NUMBER OF VOTES</u>		
	<u>2ND 3 MONTHS</u>	<u>1ST 6 MTHS FISCAL YEAR</u>	
	<u>FISCAL YEAR</u> <u>1971-72</u>	<u>1971-72</u>	<u>1970-71</u>
PRE-HEARING VOTE	7	19	7
POST-HEARING VOTE	12	27	21
BALLOTS NOT COUNTED	-	-	-
 <u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	4	21	7
POST-HEARING VOTE	16	30	35
BALLOTS NOT COUNTED	<u>1</u>	<u>1</u>	<u>3</u>
 TOTAL	40	98	73
	<u>==</u>	<u>==</u>	<u>==</u>

*[INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.]

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICANTS DISPOSED OF BY
THE ONTARIO LABOUR RELATIONS BOARD

	<u>NUMBER OF VOTES</u>		
	<u>2ND 3 MONTHS</u>	<u>1ST 6 MTHS FISCAL YEAR</u>	
	<u>FISCAL YEAR</u> <u>1971-72</u>	<u>1971-72</u>	<u>1970-71</u>
*RESPONDENT UNION SUCCESSFUL	1	1	2
RESPONDENT UNION UNSUCCESSFUL	<u>9</u>	<u>14</u>	<u>13</u>
 TOTAL	10	15	15
	<u>==</u>	<u>==</u>	<u>==</u>

*[IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.]

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971] OLRB REP.

OCTOBER

PAGES 628 - 692



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Monthly Report

ONTARIO LABOUR RELATIONS BOARD

215 and 11
1971

ONTARIO LABOUR RELATIONS BOARD REPORTS X

A MONTHLY SERIES OF DECISIONS FROM THE

ONTARIO LABOUR RELATIONS BOARD

CITED [1971] OLRB REP.

BARGAINING UNIT - WHETHER SECRETARIES AND SOCIAL WORKERS
SHARE A COMMUNITY OF INTEREST - WHETHER TWO BARGAINING
UNITS APPROPRIATE.

CANADIAN UNION OF PUBLIC EMPLOYEES v. THE CHILDREN'S
AID SOCIETY OF HURON COUNTY 632

BARGAINING UNIT - EMPLOYEE - ONE PART-TIME EMPLOYED REGU-
LARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK
CLAIMED AS MEMBER - WHETHER EXCLUDED FROM FULL-TIME
UNIT.

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL
91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMER-
ICA v. WELLS FARGO ARMoured EXPRESS, LTD. 632

BARGAINING UNIT - PRACTICE - CONSTRUCTION INDUSTRY - APPLI-
CANT SEEKING TO AMEND ITS PROPOSED BARGAINING UNIT ON
DISCOVERING THE NUMBER AND CLASSIFICATION OF EMPLOYEES -
WHETHER BOARD WILL PERMIT MODIFICATION.

UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA
v. GWELL INVESTMENTS LTD. 675

CONSTRUCTION INDUSTRY - EMPLOYEE - EMPLOYEES ENGAGING IN
WORK OF DIFFERENT CRAFTS AND PAID ONLY ONE RATE -
NATURE OF STATUS OR APPLICATION FOR CERTIFICATION.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
v. GEORGE AND ASMUSSEN LIMITED 683

COLLECTIVE AGREEMENT - MANAGER OF COMPANY - WITNESSES SIGN-
ING COLLECTIVE AGREEMENT - NOT AN OFFICER OF COMPANY -
WHETHER COLLECTIVE AGREEMENT.

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA
LOCAL UNION 1669 v. ALCAN BUILDING PRODUCTS LIMITED 670

COLLECTIVE AGREEMENT - PRACTICE - TRADE UNION - WHETHER AS-
SOCIATION SIGNING COLLECTIVE AGREEMENT QUALIFIED AS A
TRADE UNION - WHETHER ASSOCIATION VIABLE ENTITY -
WHETHER COLLECTIVE AGREEMENT IN EXISTENCE - WHETHER
BOARD WILL ORDER A REPRESENTATION VOTE ON AN APPLICA-
TION FOR CERTIFICATION BY A TRADE UNION.

UNITED PAPERMAKERS AND PAPERWORKERS AFL-CIO, CLC, LOCAL 894 v. ATLANTIC PACKAGING COMPANY v. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796	690
CONSTRUCTION INDUSTRY - BARGAINING UNIT - PRACTICE - APPLICANT SEEKING TO AMEND ITS PROPOSED BARGAINING UNIT ON DISCOVERING THE NUMBER AND CLASSIFICATION OF EMPLOYEES - WHETHER BOARD WILL PERMIT MODIFICATION.	
UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA v. GWELL INVESTMENTS LTD.	675
DUTY OF FAIR REPRESENTATION - TRADE UNION - GRIEVANCE PROCESSED TO SECOND STAGE - MATTER PLACED BEFORE EXECUTIVE COMMITTEE OF UNION AND THEN MEMBERSHIP MEETING - DECISION NOT TO PROCEED - WHETHER ARBITRARY DISCRIMINATORY OR IN BAD FAITH.	
NIKOLA HALAR (2ND SHOP STEWARD) v. GORD McKELLER & SHEET-METAL WORKERS LOCAL #540 v. THOMAS MARK	664
EMPLOYEE - BARGAINING UNIT - ONE PART-TIME EMPLOYEE REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK CLAIMED AS MEMBER - WHETHER EXCLUDED FROM FULL-TIME UNIT.	
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA v. WELLS FARGO ARMoured EXPRESS, LTD.	632
EMPLOYEE - CO-ORDINATORS OF SOCIAL WORK AGENCY - WHETHER MANAGERIAL.	
CANADIAN UNION OF PUBLIC EMPLOYEES v. THE CHILDREN'S AID SOCIETY OF HURON COUNTY	632
EMPLOYEE - REPRESENTATION VOTE - EMPLOYEE PROMOTED TO FOREMAN ON A TRIAL BASIS - WHETHER EMPLOYEE IN VOTING CONSTITUENCY ON DATE VOTE TAKEN - WHETHER PERMITTED TO VOTE.	
LOCAL UNION 2679, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA v. SUCCESS DISPLAY LIMITED	636
EMPLOYEES - S. 79(2) - WHETHER PERSONS ARE EMPLOYEES FOR PURPOSES OF THE ACT - WHETHER ISSUE IS THE SAME AS TO	

WHETHER EMPLOYEES COVERED BY COLLECTIVE AGREEMENT -
WHETHER BOARD WILL DETERMINE ISSUE - WHETHER QUESTION
HAS ARISEN.

INTERNATIONAL WOODWORKERS OF AMERICA v. LIVINGSTON
TRANSPORTATION LIMITED 681

EMPLOYEE - CONSTRUCTION INDUSTRY - EMPLOYEES ENGAGING IN
WORK OF DIFFERENT CRAFTS AND PAID ONLY ONE RATE -
NATURE OF STATUS OR APPLICATION FOR CERTIFICATION.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
v. GEORGE AND ASMUSSEN LIMITED 683

JURISDICTIONAL DISPUTE - INTERIM ORDER - IRONWORKERS AND LA-
BOURERS - REMOVAL OF PROTECTIVE FABRIC FROM STAINLESS
STEEL EXTERIOR PANELS AND WINDOW FRAMES.

LONG BRANCH WINDOW AND METAL CLEANING LIMITED v. INTER-
NATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMEN-
TAL IRONWORKERS, LOCAL 721 AND LABOURERS INTERNATIONAL
UNION OF NORTH AMERICA, LOCAL 506 679

JURISDICTIONAL DISPUTE - INTERIM ORDER - LABOURERS AND CAR-
PENTERS - ERECTION AND DISMANTLING OF TUBULAR METAL
SCAFFOLDING IN EXCESS OF 14 FEET.

LEADER MASONRY & FORMING LIMITED v. LABOURERS INTERNA-
TIONAL UNION OF NORTH AMERICA, LOCAL 837, UNITED BRO-
THERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 18,
THE FRID CONSTRUCTION COMPANY LIMITED 678

MEMBERSHIP EVIDENCE - COMBINATION APPLICATIONS AND RECEIPTS -
RECEIPT FAILING TO DISCLOSE MONEY PAYMENT, NAME OF COL-
LECTOR OR COUNTERSIGNATURE OF COLLECTOR - WHETHER CARD
MEETS BOARD REQUIREMENTS - WHETHER GROSS CARELESSNESS
SO AS TO AFFECT VALIDITY OF REMAINDER OF MEMBERSHIP
EVIDENCE - WHETHER FORM 8 IMPROPER.

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT & GENERAL
WORKERS v. CROSBY VOLKSWAGEN LIMITED 641

MEMBERSHIP EVIDENCE - PRACTICE - WHETHER TRANSFER OF MEM-
BERSHIP CARDS FROM ONE FILE INCLUDES TRANSFER OF FORM
8 - WHETHER FORM 8 MUST BE FILLED IN THE APPLICATION -
WHETHER BOARD WILL LOOK AT EVIDENCE IN EARLIER APPLICA-
TION - WHETHER REQUEST TO TRANSFER FORM 8 MUST BE MADE.

CANADIAN MERCHANDISING EMPLOYEES' UNION v. JOFFRE LAPOINTE & SONS LIMITED v. RETAIL CLERKS UNION, LOCAL 486	629
MEMBERSHIP EVIDENCE - NO DISCLOSURE OF MONEY PAYMENT - ABSENCE OF COUNTERSIGNATURES.	
DUFFERIN-PEEL SEPARATE SCHOOL BOARD CARETAKERS AND MAINTENANCE ASSOCIATION v. DUFFERIN-PEEL COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD	680
MEMBERSHIP EVIDENCE - CERTIFICATES OF MEMBERSHIP - DUES PAID FOR MONTH OF JULY - NO YEAR INDICATED - EFFECT.	
INTERNATIONAL ASSOCIATION OF BRIDGE, STURCTURAL & ORNA- MENTAL IRON WORKERS, LOCAL 759 v. KAWNEER INSTALLATIONS LIMITED	674
PRACTICE - MEMBERSHIP EVIDENCE - WHETHER TRANSFER OF MEMBER- SHIP CARDS FROM ONE FILE INCLUDES TRANSFER OF FORM 8 - WHETHER FORM 8 MUST BE FILED IN THE APPLICATION - WHETHER BOARD WILL LOOK AT EVIDENCE IN EARLIER APPLIC- ATION - WHETHER REQUEST TO TRANSFER FORM 8 MUST BE MADE.	
CANADIAN MERCHANDISING EMPLOYEES' UNION v. JOFFRE LA- POINTE & SONS LIMITED v. RETAIL CLERKS UNION, LOCAL 486	629
PRACTICE - COLLECTIVE AGREEMENT - TRADE UNION - WHETHER ASSOCIATION SIGNING COLLECTIVE AGREEMENT QUALIFIED AS A TRADE UNION - WHETHER ASSOCIATION VIABLE EN- TITY - WHETHER COLLECTIVE AGREEMENT IN EXISTENCE - WHETHER BOARD WILL ORDER A REPRESENTATION VOTE ON AN APPLICATION FOR CERTIFICATION BY A TRADE UNION.	
UNITED PAPERMAKERS AND PAPERWORKERS AFL-CIO, CLC, LOCAL 894 v. ATLANTIC PACKAGING COMPANY v. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796	690
PRACTICE - BARGAINING UNIT - CONSTRUCTION INDUSTRY - APPLI- CANT SEEKING TO AMEND ITS PROPOSED BARGAINING UNIT ON DISCOVERING THE NUMBER AND CLASSIFICATION OF EMPLOYEES - WHETHER BOARD WILL PERMIT MODIFICATION.	
UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA v. GWELL INVESTMENTS LTD.	675

REPRESENTATION VOTE - EMPLOYER INDICATING OPPOSITION TO
 APPLICANT UNION - EMPLOYER CAUSING NOTICE TO BE POSTED
 INDICATING IT WOULD RECOGNIZE A STAFF ASSOCIATION FORMED
 BY EMPLOYEES TO ESTABLISH AN INDEPENDENT DEMOCRATIC OR-
 GANIZATION - CONGREGATION OF MANAGEMENT OFFICIALS AD-
 JACENT TO POLLING BOOTHS - WHETHER UNDUE INFLUENCE -
 WHETHER BOARD WILL ORDER A NEW VOTE.

RETAIL CLERKS INTERNATIONAL ASSOCIATION v. ZEHR'S MAR-
 KETS LIMITED 638

REPRESENTATION VOTE - WHETHER BALLOT SPOILED - WHETHER BALLOT
 CLEARLY INDICATES CHOICE.

LOCAL UNION 2679, UNITED BROTHERHOOD OF CARPENTERS AND
 JOINERS OF AMERICA v. SUCCESS DISPLAY LIMITED 636

REPRESENTATION VOTE - EMPLOYEE - EMPLOYEE PROMOTED TO FORE-
 MAN ON A TRIAL BASIS - WHETHER EMPLOYEE IN VOTING
 CONSTITUENCY ON DATE VOTE TAKEN - WHETHER PERMITTED
 TO VOTE.

LOCAL UNION 2679, UNITED BROTHERHOOD OF CARPENTERS AND
 JOINERS OF AMERICA v. SUCCESS DISPLAY LIMITED 636

SALE OF BUSINESS - WHETHER TRANSFER OF WORK AMOUNTS TO INTER-
 MINGLING OF EMPLOYEES - WHETHER MERGER FALLS WITHIN ANY
 OTHER MANNER OF DISPOSITION - WHAT CONSTITUTES LIKE BAR-
 GAINING UNIT.

INTERNATIONAL MOLDERS' AND ALLIED WORKERS' UNION, LOCAL
 246 v. EATON YALE LTD. v. UNITED ELECTRICAL, RADIO AND
 MACHINE WORKERS OF AMERICA AND ITS LOCAL 535 667

SECTION 65 - UNION EMPLOYEES REMOVED FROM PENSION PLAN -
 WHETHER DISCRIMINATION CONTRARY TO ACT - REMEDY -
 WHETHER COMPANY HAS OFFSET DISCRIMINATION.

LOCAL 1966, INTERNATIONAL BROTHERHOOD OF ELECTRICAL
 WORKERS, A.F.L. - C.I.O. & C.L.C. v. JOHNSON CONTROLS
 LIMITED 643

TRADE UNION - PRACTICE - COLLECTIVE AGREEMENT - WHETHER
 ASSOCIATION SIGNING COLLECTIVE AGREEMENT QUALIFIED
 AS A TRADE UNION - WHETHER ASSOCIATION VIABLY ENTITY -
 WHETHER COLLECTIVE AGREEMENT IN EXISTENCE - WHETHER
 BOARD WILL ORDER A REPRESENTATION VOTE ON AN APPLICA-
 TION FOR CERTIFICATION BY A TRADE UNION.

UNITED PAPERMAKERS AND PAPERWORKERS AFL-CIO, CLC,
LOCAL 894 v. ATLANTIC PACKAGING COMPANY v. INTERNA-
TIONAL UNION OF OPERATING ENGINEERS, LCOAL 796

690

TRADE UNION - DUTY OF FAIR REPRESENTATION - GRIEVANCE PRO-
CESSED TO SECOND STAGE - MATTER PLACED BEFORE EXECUTIVE
COMMITTEE OF UNION AND THEN MEMBERSHIP MEETING - DECISION
NOT TO PROCEED - WHETHER ARBITRARY DISCRIMINATORY OR
IN BAD FAITH.

NIKOLA HALAR (2ND SHOP STEWARD) v. GORD MCKELLER & SHEET-
METAL WORKERS LOCAL #540 v. THOMAS MARK

664

TRADE UNION - WHETHER OFFICERS ELECTED IN ACCORDANCE WITH
CONSTITUTION - WHETHER BOARD WILL CONFER STATUS - CON-
STITUTION DISENFRANCHISING EMPLOYEES.

DUFFERIN-PEEL SEPARATE SCHOOL BOARD CARETAKERS AND MAIN-
TENANCE ASSOCIATION v. DUFFERIN-PEEL COUNTY ROMAN CATHO-
LIC SEPARATE SCHOOL BOARD

680

TRADE UNION - S. 10 - CONSTITUTION RESTRICTING MEMBERSHIP TO
CITIZENS OF CANADA AND BRITISH SUBJECTS - PRACTICE OF
TRADE UNION - WHETHER BOARD UNABLE TO CERTIFY APPLICANT.

INTERNATIONAL ALLIANCE THEATRICAL STAGE EMPLOYEES AND
MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES
AND CANADA LOCAL 58, TORONTO v. VICTOR PRODUCTIONS
LIMITED AND CO.

685

FROM MAKING THE ALLEGATIONS WHICH THE PRESIDENT OF THE APPLICANT MADE IN HIS LETTER OF AUGUST 31ST. IN ADDITION, THERE WAS NO EXPLANATION AS TO WHY THESE ALLEGATIONS DID NOT COME TO THE ATTENTION OF OTHER OFFICERS OR OFFICIALS OF THE APPLICANT AT AN EARLIER DATE.

18. IN VIEW OF THESE CIRCUMSTANCES, THE BOARD FINDS THAT THE APPLICANT HAS NOT SATISFIED THE ONUS ON IT TO MAKE THE NECESSARY INQUIRIES AND TO FILE A NOTICE OF ITS INTENTION TO ALLEGE IMPROPER OR IRREGULAR CONDUCT PROMPTLY.

19. ACCORDINGLY, SINCE THE BOARD IS OF OPINION THAT THE APPLICANT FAILED TO ACT PROMPTLY, THE BOARD, PURSUANT TO THE PROVISIONS OF SECTION 47(2) OF THE BOARD'S RULES OF PROCEDURE, IS NOT PREPARED TO PERMIT THE APPLICANT TO ADDUCE ANY EVIDENCE IN SUPPORT OF ITS ALLEGATIONS.

20. THE MATTER IS REFERRED TO THE REGISTRAR.

688-71-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. WOODWAY STRUCTURAL COMPONENTS (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

DECISION OF THE BOARD: SEPTEMBER 8, 1971.

PARAGRAPH 12 OF THE BOARD'S DECISION OF AUGUST 31, 1971 IS DELETED AND THE FOLLOWING SUBSTITUTED THEREFOR:

HAVING DEALT WITH THE PRELIMINARY QUESTION OF ONUS RAISED BY COUNSEL FOR THE APPLICANT, THE BOARD DIRECTS THAT THE REGISTRAR LIST THIS MATTER FOR CONTINUATION OF HEARING FOR THE PURPOSE OF AFFORDING THE APPLICANT AND THE RESPONDENT AN OPPORTUNITY TO ADDUCE EVIDENCE AND MAKE REPRESENTATIONS AS TO WHETHER THERE HAS BEEN A SALE OF THE BUSINESS OF ENGINEERING TIMBER PRODUCTS, A DIVISION OF GLULAM PRODUCTS LIMITED TO WOODWAY STRUCTURAL COMPONENTS WITHIN THE MEANING OF SECTION 55 (FORMERLY 47A OF THE ACT).

815-71-R: CANADIAN MERCHANDISING EMPLOYEES' UNION (APPLICANT) V.
JOFFRE LAPOINTE & SONS LIMITED (RESPONDENT) V. RETAIL CLERKS UNION,
LOCAL 486 (INTERVENER).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND A. MAIN.

DECISION OF THE BOARD: OCTOBER 1, 1971.

1. BY LETTER DATED SEPTEMBER 22, 1971, THE APPLICANT HAS REQUESTED THE BOARD TO RECONSIDER ITS DECISION OF SEPTEMBER 3RD IN THIS MATTER. THE APPLICATION FOR RECONSIDERATION READS AS FOLLOWS:

THE APPLICANT, THE CANADIAN MERCHANDISING EMPLOYEES' UNION HEREBY APPLIES TO THE ONTARIO LABOUR RELATIONS BOARD FOR RECONSIDERATION OF ITS DECISION IN THE WITHIN MATTER DATED SEPTEMBER 3, 1971 AND FOR AN ORDER DIRECTING THAT A REPRESENTATION VOTE BE TAKEN ON THE FOLLOWING GROUNDS:

1. ON THE 15TH OF JULY, 1971 THE APPLICANT FILED A FORM 8 ACCOMPANIED BY FOUR COMBINATION APPLICATION FOR MEMBERSHIP RECEIPTS WITH REFERENCE TO FILE 704-71-R (JOFFRE LAPOINTE & SONS LIMITED).

2. ON AUGUST 16TH, THE APPLICANT REQUESTED THAT THE MEMBERSHIP CARDS FILED IN THIS APPLICATION BE TRANSFERRED TO THE CURRENT APPLICATION, NAMELY 815-71-R.

3. THIS REQUEST WAS ACKNOWLEDGED ON AUGUST 18TH BY THE DEPUTY REGISTRAR.

4. ON AUGUST 19TH THE DEPUTY REGISTRAR ACKNOWLEDGED RECEIPT OF FORM 8 DULY COMPLETED ON BEHALF OF ONE ADDITIONAL PERSON IN THIS MATTER, TOGETHER WITH ONE COMBINATION APPLICATION FOR MEMBERSHIP RECEIPT. THE DEPUTY REGISTRAR THEN ACKNOWLEDGED AS FOLLOWS: "I POINT OUT THAT THE BOARD NOW HAS DOCUMENTARY EVIDENCE OF MEMBERSHIP ON BEHALF OF FIVE PERSONS ON FILE IN THIS CASE."

5. THE APPLICANT HAD THEREBY FILED IN THE WITHIN APPLICATION ADEQUATE MEMBERSHIP CARDS TO COMPLY WITH THE PERCENTAGE PROVISIONS OF THE ACT.

6. THE APPLICANT HAD ALSO COMPLIED WITH THE PROVISIONS OF RULE 6 OF THE BOARD'S RULES OF PROCEDURE IN THAT IT HAD FILED A DECLARATION CONCERNING ALL SUCH MEMBERSHIP DOCUMENTS IN FORM 8 AND THE BOARD HAD SO ACKNOWLEDGED BY ITS LETTER OF AUGUST 19, 1971.

7. PURSUANT TO THE INTERPRETATION SECTION OF THE BOARD'S RULES OF PROCEDURE, "FILE" MEANS FILE WITH THE BOARD AND THIS HAD BEEN DONE WITHIN THE TIME STIPULATED.

8. IN VIEW OF THE FACT THAT THE ORIGINAL FOUR MEMBERSHIP CARDS HAD BEEN ATTACHED TO THE ORIGINAL FORM 8 THERE CAN HAVE BEEN NO DECEPTION OR MISLEADING OF ANY PERSON WHEN THE APPLICANT REQUESTED THAT THESE CARDS BE TRANSFERRED TO THE CURRENT FILE. IT WAS THE OBVIOUS INTENTION OF THE APPLICANT TO TRANSFER THE FORM 8 ALONG WITH THE CARDS AND THIS WAS ACKNOWLEDGED AND ACCEPTED BY THE DEPUTY REGISTRAR IN HER ACKNOWLEDGING LETTER OF AUGUST 19TH.

9. UNDER THE CIRCUMSTANCES, THE BOARD MISCONSTRUED THE PROVISIONS OF THE ACT AND THE RULES OF PROCEDURE WHEN IT DECLARED IN PARAGRAPH 8 OF ITS REASONS THAT THE APPLICANT FAILED TO FILE A COPY OF FORM 8.

10. THE BOARD FURTHER ERRED IN FINDING THAT IT WAS NOT SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN 35% OF THE EMPLOYEES OF THE RESPONDENT WERE MEMBERS OF THE APPLICANT ON THE TERMINAL DATE.

11. BY MAKING THE FINDINGS THAT IT DID, THE BOARD IN THE FACE OF EXPRESS DOCUMENTARY EVIDENCE TO THE CONTRARY HAS DENIED THE RIGHT

OF THE EMPLOYEES OF THE RESPONDENT COMPANY TO BE REPRESENTED BY THE UNION OF ITS CHOICE. THE APPLICANT THEREFORE REQUESTS THAT THE MATTER BE REVIEWED BY THE BOARD AND AN OPPORTUNITY BE GIVEN TO THE EMPLOYEES TO EXPRESS THEIR INTENTIONS IN A VOTE AS PRESCRIBED BY THE ACT.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

2. THE FORM 8 ACKNOWLEDGED BY THE BOARD ON AUGUST 19TH WAS A DECLARATION RESTRICTED TO ONE SPECIFIC "ADDITIONAL" MEMBERSHIP CARD, RECEIPT OF WHICH WAS ALSO ACKNOWLEDGED. HOWEVER, THE BOARD'S LETTER OF AUGUST 19TH WENT ON TO SAY "I POINT OUT THAT THE BOARD NOW HAS DOCUMENTARY EVIDENCE OF MEMBERSHIP ON BEHALF OF FIVE PERSONS ON FILE IN THIS CASE". THIS STATEMENT COULD HAVE ALERTED THE APPLICANT TO THE FACT THAT THE OTHER FOUR CARDS WERE NOT SUPPORTED BY THE FORM 8 WHICH WAS ON FILE IN THIS CASE.
3. WHILE THE TERM "FILE" IS DEFINED IN SECTION 1(1)(A) OF THE BOARD'S RULES OF PROCEDURE AS MEANING "FILE WITH THE BOARD", BEFORE A DOCUMENT CAN BE SAID TO BE FILLED WITH THE BOARD IN A PARTICULAR APPLICATION IT MUST BE FILED WITH THE BOARD IN THAT APPLICATION. FORM 8 IS PART OF THE EVIDENCE IN A CERTIFICATION APPLICATION. ON ITS FACE THE DOCUMENT HAS REFERENCE TO THAT APPLICATION. IN SUBSEQUENT APPLICATIONS, THE BOARD CANNOT PROPERLY LOOK AT EVIDENCE THAT WAS FILED IN EARLIER APPLICATIONS. THE BOARD MUST MAKE ITS DECISION BASED ON THE EVIDENCE THAT IS BEFORE IT AT THE HEARING AND WITH RESPECT TO WHICH THE PARTIES HAVE AN OPPORTUNITY TO DIRECT THEIR ARGUMENT.
4. WHATEVER THE INTENTION OF THE APPLICANT MAY HAVE BEEN WHEN IT ASKED THAT THE MEMBERSHIP CARDS BE TRANSFERRED PRIOR TO THE TERMINAL DATE IN THIS APPLICATION (AND THEREFORE FILED IN THIS APPLICATION) THE ONLY INTENTION THAT WAS EXPRESSED BY THE APPLICANT WAS WITH RESPECT TO SUCH MEMBERSHIP CARDS. NO MENTION WAS MADE TO FORM 8 AT THAT TIME. IF THE APPLICANT INTENDED THAT FORM 8 ALSO BE TRANSFERRED TO THIS APPLICATION (AND THEREFORE FILED IN THIS MATTER) IT FAILED TO FORMULATE THAT INTENT INTO A REQUEST THAT THE TRANSFER OF FORM 8 BE MADE. SINCE THE HEARING IN THIS MATTER HAS BEEN COMPLETED, IT IS NOW TOO LATE TO ADD EVIDENCE FOR THE BOARD'S CONSIDERATION.
5. THE APPLICANT HAS NOT ALLEGED THAT NEW EVIDENCE IS NOW AVAILABLE WHICH WAS NOT AVAILABLE AT THE HEARING IN THIS MATTER AND SINCE THE BOARD CONSIDERED ALL THE EVIDENCE BEFORE IT AND THE REPRESENTATIONS WITH RESPECT THERETO PRIOR TO ARRIVING AT ITS DECISION ON SEPTEMBER 3RD, THE BOARD DOES NOT DEEM IT ADVISABLE TO VARY OR REVOKE

ITS DECISION OF SEPTEMBER 3, 1971. THE APPLICANT'S REQUEST IS THEREFORE DENIED.

947-71-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. WELLS FARGO ARMOURD EXPRESS, LTD. (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: I. J. THOMSON FOR THE APPLICANT, JOHN G. PARKINSON AND T. K. CARTER FOR THE RESPONDENT.

DECISION OF THE BOARD: OCTOBER 5, 1971.

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3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. FOR THE REASONS GIVEN IN THE BRINKS EXPRESS COMPANY OF CANADA LIMITED CASE, OLRB MONTHLY REPORT, JULY 1970, P. 502, SINCE THERE WAS ONLY ONE EMPLOYEE WHO WAS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AT THE TIME THIS APPLICATION WAS MADE AND SINCE THAT EMPLOYEE WAS CLAIMED BY THE APPLICANT AS A MEMBER, THE BOARD FINDS THAT IN THESE CIRCUMSTANCES THE BOARD SHOULD NOT EXCLUDE PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK FROM THE BARGAINING UNIT AS REQUESTED BY THE RESPONDENT.

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6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

18983-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CHILDREN'S AID SOCIETY OF HURON COUNTY (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND J. D. BELL.

APPEARANCES AT THE HEARING: ARTHUR RISELEY FOR THE APPLICANT; DANIEL J. MURPHY, Q.C. AND B. R. HEATH FOR THE RESPONDENT.

DECISION OF THE BOARD:

OCTOBER 5, 1971.

1. THE BOARD NOTES THE AGREEMENT OF THE PARTIES TO THE SUBSTITUTION OF AN EMPLOYER REPRESENTATIVE IN THE PLACE AND STEAD OF THE LATE MR. R. W. TEAGLE AND THE APPOINTMENT BY THE CHAIRMAN, MR. G. W. REED, Q.C., OF MR. J. D. BELL IN THE PLACE AND STEAD OF MR. R. W. TEAGLE. THE BOARD ALSO NOTES THE AGREEMENT OF THE PARTIES THAT MR. J. D. BELL USE THE NOTES OF MR. R. W. TEAGLE WHICH WERE TAKEN DURING THE INITIAL HEARING OF THIS MATTER.

2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

3. THE EMPLOYEES AFFECTED IN THIS APPLICATION FOR CERTIFICATION ARE THE DIRECTOR OF THE RESPONDENT, TWO CO-ORDINATORS, FIVE SOCIAL WORKERS AND FOUR SECRETARIES.

4. THE POSITION OF THE APPLICANT IS THAT ALL OF THE EMPLOYEES OF THE RESPONDENT WITH THE EXCEPTION OF THE DIRECTOR, OUGHT TO BE INCLUDED IN ONE BARGAINING UNIT AND THAT THE CO-ORDINATORS ARE APPROPRIATE FOR INCLUSION IN THIS BARGAINING UNIT BECAUSE THEY DO NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. THE POSITION OF THE RESPONDENT IS THAT THERE ARE TWO BARGAINING UNITS APPROPRIATE FOR COLLECTIVE BARGAINING IN ALL OF THE CIRCUMSTANCES OF THIS APPLICATION, NAMELY, A BARGAINING UNIT CONSISTING OF SOCIAL WORKERS AND A BARGAINING UNIT CONSISTING OF SECRETARIES. IT IS THE POSITION OF THE RESPONDENT THAT THE CO-ORDINATORS EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND OUGHT THEREFORE TO BE EXCLUDED FROM A BARGAINING UNIT OF SOCIAL WORKERS.

5. THE BOARD HAS CONSIDERED THE REPORT OF THE EXAMINER AND THE REPRESENTATIONS OF THE PARTIES IN THIS MATTER.

6. THE EVIDENCE BEFORE THE BOARD REVEALS THAT WHILE THE SECRETARIES WORK CLOSELY WITH THE SOCIAL WORKERS AND THE CO-ORDINATORS, THEIR WORK IS ESSENTIALLY CONFINED TO ROUTINE MATTERS. THEIR FAMILIARITY WITH THE WORK OF THE RESPONDENT AND THEIR EXERCISE OF INITIATIVE IS CONFINED TO AREAS CLOSELY CONTROLLED BY THE SOCIAL WORKERS AND THE CO-ORDINATORS, AND, WHEN THEIR DUTIES ARE VIEWED AS A WHOLE, IT APPEARS THAT THE AMOUNT OF INITIATIVE EXPECTED OF AND EXERCISED BY THE SECRETARIES IS NO MORE THAN WOULD BE REQUIRED OF SECRETARIES WHO ARE INTERESTED IN AND INFORMED ABOUT THE WORK OF THEIR EMPLOYER. IT APPEARS THAT THE SECRETARIES SPEND ALL OF THEIR TIME IN THE OFFICE, WHEREAS THE CO-ORDINATORS AND SOCIAL WORKERS SPEND HALF OF THE TIME OUT OF THE OFFICE.

7. IN ADDITION, WHEREAS THE SECRETARIES WORK REGULAR WORKING HOURS, THE SOCIAL WORKERS AND CO-ORDINATORS HAVE FLEXIBLE HOURS BECAUSE THEIR WORK IS DEPENDENT ON THE EXIGENCES OF THE MATTERS BEFORE THEM. APPARENTLY, IN RECOGNITION OF THE DIFFERENCE IN THE HOURS WORKED THE SOCIAL WORKERS AND CO-ORDINATORS RECEIVE ONE MONTH'S VACATION EACH YEAR, WHILE THE SECRETARIES INITIALLY RECEIVE TWO WEEKS' VACATION EACH YEAR. THERE IS A CONSIDERABLE DIFFERENCE IN SALARY BETWEEN THE SECRETARIES ON THE ONE HAND AND THE SOCIAL WORKERS AND CO-ORDINATORS ON THE OTHER.

8. MOREOVER, IT IS QUITE CLEAR THAT WHEREAS THE WORK OF THE SECRETARIES IS CONFINED TO ESSENTIALLY ROUTINE MATTERS WITHIN THE OFFICE, THE CO-ORDINATORS AND SOCIAL WORKERS EXERCISE SKILLS AND PERSONAL JUDGMENT DERIVED FROM THEIR TRAINING AND EXPERIENCE IN THE FIELD OF SOCIAL WORK IN DEALING WITH THE SITUATIONS WHICH BESET PERSONS WHO HAVE DEALINGS WITH THE RESPONDENT. IN OUR OPINION, THE SECRETARIES ON THE ONE HAND AND THE CO-ORDINATORS AND SOCIAL WORKERS ON THE OTHER HAND DO NOT SHARE A COMMUNITY OF INTEREST AND, IN THE CIRCUMSTANCES OF THIS APPLICATION, THE BOARD FINDS THAT THE SECRETARIES AND THE SOCIAL WORKERS OUGHT PROPERLY BE INCLUDED IN SEPARATE BARGAINING UNITS.

9. THE BOARD HAS EXAMINED THE EXTENSIVE EVIDENCE CONCERNING THE DUTIES AND RESPONSIBILITIES OF THE CO-ORDINATORS. BEFORE EXAMINING THE WORK OF THE CO-ORDINATORS IN DETAIL, IT IS NECESSARY TO UNDERSTAND THAT IN SEPTEMBER 1970 (SOME MONTHS PRIOR TO THE MAKING OF THIS APPLICATION FOR CERTIFICATION) A NEW DIRECTOR, MR. B. R. HEATH, WAS APPOINTED BY THE RESPONDENT. THIS APPOINTMENT WAS ACCOMPANIED BY A CONSIDERABLE CHANGE IN THE MANNER IN WHICH THE RESPONDENT CONDUCTED ITS OPERATION. IT IS ALSO QUITE CLEAR THAT THE PLANS OF THE NEW DIRECTOR ARE STILL DEVELOPING AND THAT AT THE TIME OF THE MAKING OF THIS APPLICATION FOR CERTIFICATION THE POSITION OF THE CO-ORDINATORS MAY PROPERLY BE CONSIDERED AS IN A STATE OF TRANSITION. IT IS THEREFORE NOT SURPRISING THAT THE CO-ORDINATORS, AS REVEALED IN THEIR EVIDENCE, WERE NOT AT ALL SURE OF THEIR DUTIES AND RESPONSIBILITIES.

10. ON EXAMINING THE EVIDENCE OF THE CO-ORDINATORS AS A WHOLE, THE BOARD IS OF THE OPINION THAT THERE WAS A DIMINUTION OF THEIR DUTIES AND RESPONSIBILITIES SINCE THE NEW DIRECTOR WAS APPOINTED IN SEPTEMBER 1970. IT IS QUITE CLEAR THAT THE CO-ORDINATORS HAVE NO POWER TO DISCIPLINE, HAVE NO AUTHORITY TO GRANT TIME OFF AND THAT THEIR RELATIONSHIP WITH THE DIRECTOR IS ESSENTIALLY ONE OF ADVISING A PERSON WHO HAS BEEN NEWLY APPOINTED TO A POST. THE CO-ORDINATORS "RELATE" TO BUT DO NOT SUPERVISE THEIR SOCIAL WORKERS. THEIR AUTHORITY TO SPEND THE RESPONDENT'S FUNDS IS LIMITED \$20.00 WORTH OF GROCERIES, AND, IN COMMON WITH THE OTHER SOCIAL WORKERS, TO AUTHORIZING THE EXPENDITURE OF SMALL AMOUNTS OF MONEY IN AN EMERGENCY.

11. A CLOSE EXAMINATION OF THE APPLICATION OF THE WORD "RELATE" REVEALS THAT THERE IS A DISCUSSION OF MUTUAL PROBLEMS AND THE SEEKING THE ADVICE AND INFORMATION OF OTHER SOCIAL WORKERS IN CERTAIN AREAS. SOME OF THE "RELATING" BETWEEN THE SOCIAL WORKERS AND THE CO-ORDINATORS TAKES PLACE DURING THE COFFEE BREAK. COMPLAINTS ABOUT A SOCIAL WORKER OR A MATTER REQUIRING SERIOUS CORRECTION OF A SOCIAL WORKER IN HIS OR HER WORK ARE REFERRED TO THE DIRECTOR. THE RESPONDENT MADE MUCH OF THE FACT THAT THE CO-ORDINATORS ATTEND WEEKLY STAFF MEETINGS WITH THE DIRECTOR AND THE SECRETARY TO THE DIRECTOR. HOWEVER, IT APPEARS TO THE BOARD THAT THE PURPOSE OF THIS MEETING IS ESSENTIALLY TO ENABLE THE DIRECTOR TO ASSESS THE WORKINGS OF THE RESPONDENT AND TO ENABLE HIM TO GATHER INFORMATION FROM THE CO-ORDINATORS ON ROUTINE MATTERS.

12. THE RESPONDENT ALSO EMPHASIZED THE FACT THAT THE CO-ORDINATORS, FROM TIME TO TIME, ATTEND REGIONAL MEETINGS FOR SUPERVISORS IN SOUTHERN ONTARIO. IN OUR OPINION, THE FACT THAT THE CO-ORDINATORS ATTEND THESE REGIONAL MEETINGS DOES NOT IN ITSELF CONFER MANAGERIAL RESPONSIBILITY UPON THE CO-ORDINATORS. IT APPEARS THAT THE ATTENDANCE OF THE CO-ORDINATORS AT THESE REGIONAL MEETINGS SERVES TO ACQUAINT THEM WITH CURRENT DEVELOPMENTS IN THE FIELD OF SOCIAL WORK. THE RESPONDENT STRESSED THAT PERSONS CLASSIFIED AS CO-ORDINATORS AND EMPLOYED BY LARGER CHILDREN'S AID SOCIETIES IN ONTARIO ARE COMMONLY INVOLVED SOLELY IN THE ADMINISTRATIVE SIDE OF SOCIAL WORK AND DO EXERCISE MANAGERIAL FUNCTIONS. BE THAT AS IT MAY, THE BOARD, IS, OF COURSE, IN THIS APPLICATION FOR CERTIFICATION CONCERNED WITH THE FUNCTIONS OF THE RESPONDENT'S CO-ORDINATORS AND NOT WITH THE FUNCTIONS OF OTHER CO-ORDINATORS. THE BESTOWING OF A CERTAIN JOB CLASSIFICATION OR TITLE ON AN INDIVIDUAL DOES NOT IN ITSELF CONFER MANAGERIAL RESPONSIBILITY ON THE INDIVIDUAL CONCERNED. IT IS THE EXPERIENCE OF THE BOARD THAT INDIVIDUALS BEARING IDENTICAL JOB CLASSIFICATIONS OR TITLES FREQUENTLY EXERCISE WIDELY VARYING DUTIES AND RESPONSIBILITIES WITHIN DIFFERENT ORGANIZATIONS.

13. ALTHOUGH THE DIRECTOR SOLICITS THE OPINIONS OF NOT ONLY THE CO-ORDINATORS BUT ALSO THE OTHER SOCIAL WORKERS ON THE MATTER OF THE RESPONDENT'S BUDGET, HE NEVERTHELESS MAKES THE FINAL DECISION ON THE SUBMISSION TO THE RESPONDENT OF PROJECTED FINANCIAL REQUIREMENTS. WHEN THE OPERATIONS OF THE RESPONDENT ARE VIEWED AS A WHOLE, IT IS READILY APPARENT THAT THE RESPONDENT OPERATES ESSENTIALLY A TEAM CONCEPT IN ITS FUNCTIONING. THE CONCEPT OF THE TEAM APPROACH APPEARS TO BE GAINING ACCEPTANCE AMONG THOSE ENGAGED IN THE INSTITUTIONAL ASPECTS OF THE HEALING ARTS AS WELL AS IN THE FIELD OF SOCIAL WORK. WHILE THE CONCEPT OF THE TEAM APPROACH TENDS TO CREATE AN OPPORTUNITY FOR A SHARING IN THE DECISION MAKING, IT IS QUITE CLEAR ON THE EVIDENCE BEFORE US THAT THE REAL DECISION MAKING AND THE TRUE MANAGERIAL FUNCTIONS WITHIN THE RESPONDENT ARE EXERCISED BY THE DIRECTOR AND THAT THE CO-ORDINATORS DO NOT EXERCISE MANA-

GERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

14. HAVING REGARD TO THE FOREGOING, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT SOCIAL WORKERS, CO-ORDINATORS, SECRETARY TO THE DIRECTOR, THE DIRECTOR, PERSONS ABOVE THE RANK OF DIRECTOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

15. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT MRS. GERALDINE STIMSON, THE SECRETARY TO THE DIRECTOR, IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND IS THEREFORE NOT APPROPRIATE FOR INCLUSION IN THE BARGAINING UNIT DEFINED IN PARAGRAPH 14.

16. HAVING REGARD TO THE FOREGOING, THE BOARD FURTHER FINDS THAT ALL SOCIAL AND CO-ORDINATORS IN THE EMPLOY OF THE RESPONDENT, SAVE AND EXCEPT THE DIRECTOR AND PERSONS ABOVE THE RANK OF DIRECTOR, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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18. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO THE BARGAINING UNIT DEFINED IN PARAGRAPH 14.

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20. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO THE BARGAINING UNIT DEFINED IN PARAGRAPH 16.

767-71-R: LOCAL UNION 2679, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. SUCCESS DISPLAY LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND E. BOYER.

APPEARANCES AT THE HEARING: T. G. HARKNESS FOR THE APPLICANT, H. A. BERESFORD AND C. B. VANDENBERG FOR THE RESPONDENT.

DECISION OF THE BOARD: OCTOBER 5, 1971.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE BOARD DIRECTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN. FOLLOWING THE TAKING OF THE VOTE ON AUGUST 20, 1971, THE RESPONDENT CHALLENGED THE VOTE ON TWO GROUNDS.

2. THE RESPONDENT ARGUED THAT ONE OF THE BALLOTS CAST WAS A SPOILED BALLOT AND SHOULD NOT BE COUNTED. THE BALLOT IN QUESTION READS AS FOLLOWS:

<p>MARK "X" OPPOSITE YOUR CHOICE</p> <p>IN YOUR EMPLOYMENT RELATIONS WITH</p> <p>SUCCESS DISPLAY LIMITED,</p> <p>DO YOU WISH TO BE REPRESENTED BY</p>		
<p>LOCAL UNION 2679, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA</p>	YES	
	NO	

AN EMPLOYEE MARKED THE BALLOT IN QUESTION WITH AN "X" IN THE SPACE OPPOSITE THE WORD "YES" AND ALSO PLACED AN "X" OVER THE WORD "YES". THE EMPLOYEE WHO MARKED THE BALLOT DID NOT PLACE ANY MARK OPPOSITE THE WORD "NO", NOR DID HE OTHERWISE INDICATE HIS CHOICE OF THE APPLICANT TO REPRESENT HIM. THERE WAS NOTHING ON THE BALLOT WHICH WOULD TEND TO IDENTIFY THE VOTER.

3. WHILE IT WOULD BE PREFERABLE HAD THE VOTER INDICATED HIS WISHES MERELY BY PLACING AN "X" IN THE SPACE OPPOSITE THE WORD "YES", WE ARE SATISFIED THAT BY PLACING AN "X" OVER THE WORD "YES" HE INTENDED TO VOTE IN FAVOUR OF THE APPLICANT. THIS INTENT WAS ALSO INDICATED WHEN HE MARKED AN "X" IN THE PROPER SPACE. IN THE ABSENCE OF SOME CLEAR INDICATION THAT HE INTENDED TO VOTE AGAINST THE APPLICANT, WE ARE SATISFIED THAT THE BALLOT IN QUESTION CLEARLY INDICATES HIS CHOICE. SINCE THE BALLOT DOES NOT DISCLOSE THE IDENTITY OF THE VOTER, WE FIND THAT THE DISPUTED BALLOT MEETS THE TWO TESTS ENUNCIATED BY THE BOARD IN THE NATIONAL STARCH AND CHEMICAL CO. (CANADA) LTD. CASE, OLRB MONTHLY REPORT, JUNE 1968, P. 285.

4. WE ACCORDINGLY FIND THAT THE RETURNING OFFICER ACTED PROPERLY IN THIS MATTER WHEN HE COUNTED THE DISPUTED BALLOT.

5. THE RESPONDENT'S SECOND OBJECTION CONCERNED THE SEALED BALLOT CAST BY MR. F. WILKE. MR. WILKE WAS AN EMPLOYEE OF THE RESPONDENT IN THE VOTING CONSTITUENCY ON THE DATE THE VOTE WAS TAKEN.

6. ITEM 4 OF THE BOARD'S DECISION OF AUGUST 10TH WHEREIN THE VOTE WAS DIRECTED READS AS FOLLOWS:

ALL EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY ON THE 28TH DAY OF JULY, 1971 WHO HAVE NOT VOLUNTARILY TERMINATED THEIR EMPLOYMENT OR WHO HAVE NOT BEEN DISCHARGED FOR CAUSE BETWEEN THE 28TH DAY OF JULY, 1971 AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

7. THE EVIDENCE ESTABLISHED THAT ON AUGUST 12TH THE RESPONDENT APPOINTED MR. WILKE FOREMAN ON A TRIAL BASIS. ON AUGUST 20TH, THE DATE THE VOTE WAS TAKEN, MR. WILKE WAS ACTING IN THE CAPACITY OF FOREMAN AND CONTINUED TO ACT IN THAT CAPACITY UNTIL THE RESPONDENT RELIEVED HIM OF HIS FOREMAN'S RESPONSIBILITIES DURING THE LATTER PART OF SEPTEMBER. THE POSITION OF FOREMAN IS EXCLUDED FROM THE VOTING CONSTITUENCY.

8. IN THE CIRCUMSTANCES OUTLINED ABOVE, WE FIND THAT MR. WILKE WAS A FOREMAN ON THE DATE THE VOTE WAS TAKEN. EVEN THOUGH HIS APPOINTMENT TO THIS POSITION WAS ON A TRIAL BASIS, HE EXERCISED ALL THE MANAGERIAL FUNCTIONS NORMALLY EXERCISED BY THE FOREMAN AND ACCORDINGLY WAS NOT AN EMPLOYEE OF THE RESPONDENT IN THE VOTING CONSTITUENCY ON THE DATE THE VOTE WAS TAKEN. SINCE MR. WILKE DID NOT CONTINUE TO BE AN EMPLOYEE OF THE RESPONDENT IN THE VOTING CONSTITUENCY BETWEEN JULY 28, 1971 AND THE DATE THE VOTE WAS TAKEN AS REQUIRED BY ITEM 4 OF THE BOARD'S DECISION OF AUGUST 10TH AS QUOTED ABOVE, HE WAS ACCORDINGLY NOT ELIGIBLE TO VOTE AND HIS SEGREGATED BALLOT SHOULD NOT BE COUNTED.

9. THE BOARD THEREFORE FINDS THAT NEITHER OF THE OBJECTIONS RAISED BY THE RESPONDENT ARE PROPER GROUNDS FOR SETTING ASIDE THE REPORT OF THE RETURNING OFFICER OR PROPER CAUSE TO DIRECT A NEW VOTE IN THIS CASE.

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689-71-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. ZEHR'S MARKETS LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: CLIFFORD EVANS FOR THE APPLICANT, H. L. WUNDER FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER E. BOYER: OCTOBER 6, 1971.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE BOARD DIRECTED ON JULY 16, 1971 THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN. ON THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE NOT MORE THAN FIFTY PER CENT OF THE BALLOTS CAST WERE CAST IN FAVOUR OF THE APPLICANT.
2. FOLLOWING THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE, THE APPLICANT REQUESTED THAT A NEW REPRESENTATION VOTE BE DIRECTED ON THE GROUNDS THAT THE RESPONDENT ENGAGED IN ACTIVITY WHICH PREVENTED THE TRUE WISHES OF THE EMPLOYEES TO BE INDICATED AT THE TIME THE PRE-HEARING REPRESENTATION VOTE WAS TAKEN.
3. THE EVIDENCE ESTABLISHING THAT THE RESPONDENT ON JULY 1, 1971 CAUSED A NOTICE TO EMPLOYEES TO BE PUBLISHED WHICH, AMONG OTHER THINGS, CLEARLY INDICATED THE RESPONDENT'S OPPOSITION TO THE APPLICATION IN THIS MATTER. ON FRIDAY, JULY 23RD THE RESPONDENT CAUSED THE FOLLOWING NOTICE TO BE PUBLISHED:

ZEHR'S MARKETS LIMITED

JULY 23, 1971.

TO: WHOM IT MAY CONCERN

IN REPLY TO REQUESTS MADE BY CERTAIN EMPLOYEES, THE MANAGEMENT OF ZEHR'S MARKETS LIMITED WISHES TO ADVISE ANY INTERESTED PARTIES THAT THE COMPANY WOULD RECOGNIZE A STAFF ASSOCIATION FORMED BY THE EMPLOYEES TO ESTABLISH AN INDEPENDENT DEMOCRATIC ORGANIZATION PLEDGED TO MAINTAINING AND DEVELOPING THE ECONOMIC AND SOCIAL INTEREST OF ITS MEMBERS.

CARL M. ZINKAN
VICE-PRESIDENT

CMZ/ms

4. WHEN THE PRE-HEARING REPRESENTATION VOTE WAS CONDUCTED ON JULY 29TH AT THE FIVE STORES IN GUELPH, APART FROM THE RESPONDENT'S MANAGERIAL PERSONNEL WHO REGULARLY WORKED AT THE STORES IN QUESTION, UP TO SEVEN OFFICERS OR OFFICIALS OF THE RESPONDENT ATTENDED AT EACH OF THE FIVE STORES DURING THE TAKING OF THE VOTE.
5. MR. ZINKAN, THE VICE-PRESIDENT OF THE RESPONDENT, TESTIFIED

THAT HE CAUSED THE NOTICE OF JULY 23RD TO BE PUBLISHED WHEN AN EMPLOYEE ASKED, "WOULD WE LOOK FAVOURABLY ON THE FORMATION OF A STAFF ASSOCIATION."

6. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, WE FIND THAT THE PUBLICATION OF THE NOTICE OF JULY 23RD CONSTITUTED UNDUE INFLUENCE. THE FACT THAT EMPLOYEES FOUND IT NECESSARY TO ASK WHETHER THE RESPONDENT WOULD LOOK FAVOURABLY ON THE FORMATION OF A STAFF ASSOCIATION, AND SOUGHT PERMISSION FROM THE RESPONDENT BEFORE DETERMINING WHO SHOULD REPRESENT THEM, IS INDICATIVE OF THE FACT THAT THE EMPLOYEES WOULD BE INFLUENCED BY ANY POSITION ANNOUNCED BY THE RESPONDENT. HAD THE RESPONDENT MERELY INDICATED THAT IT WOULD BE PREPARED TO RECOGNIZE AND BARGAIN WITH ANY ORGANIZATION THAT DEMONSTRATED THAT IT REPRESENTED THE MAJORITY OF THE EMPLOYEES, PERHAPS NO OBJECTION COULD BE TAKEN. IN THIS CASE, HOWEVER, HAVING INDICATED ITS OPPOSITION TO THE APPLICANT UNION BY ITS NOTICE OF JULY 1ST, THE RESPONDENT THEN VOLUNTEERED TO RECOGNIZE A STAFF ASSOCIATION, IF ONE WERE FORMED. THIS ANNOUNCEMENT WAS MADE SHORTLY BEFORE THE REPRESENTATION VOTE WAS TO BE TAKEN.

7. WE ACCORDINGLY FIND THAT THE RESPONDENT'S ACTIONS WERE DELIBERATELY CALCULATED TO FRUSTRATE THE PURPOSE AND INTENT OF THE REPRESENTATION VOTE AND CONSTITUTED UNDUE INFLUENCE. BY SUPERIMPOSING AN ALTERNATE CHOICE OF AN EMPLOYEE ASSOCIATION WHICH WOULD BE RECOGNIZED BY THE RESPONDENT, IF THE APPLICANT UNION WAS DEFEATED IN THE REPRESENTATION VOTE, THE RESPONDENT CLEARLY INDICATED ITS PREFERENCE AND WENT FAR BEYOND THE BOUNDS OF PROPRIETY CONTEMPLATED BY SECTION 56 (FORMERLY SECTION 48) OF THE LABOUR RELATIONS ACT.

8. AGAIN, THE CONGREGATION OF MANAGEMENT PERSONNEL IN THE STORE AREA IMMEDIATELY ADJACENT TO THE POLLING BOOTHS WOULD TEND TO BRING PRESSURE ON THE EMPLOYEES WHO ENTERED THE BOOTHS TO CAST THEIR BALLOT.

9. IN THESE CIRCUMSTANCES, WE HAVE NO HESITATION IN FINDING THAT THE PRE-HEARING REPRESENTATION VOTE CONDUCTED ON JULY 29TH WOULD NOT LIKELY DISCLOSE THE TRUE WISHES OF THE EMPLOYEES IN THIS CASE.

10. WE ACCORDINGLY DIRECT THAT A NEW REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE FOLLOWING VOTING CONSTITUENCY:

ALL EMPLOYEES OF THE RESPONDENT AT GUELPH
REGULARLY EMPLOYED FOR NOT MORE THAN 24
HOURS PER WEEK AND STUDENTS EMPLOYED FOR
THE SCHOOL VACATION PERIOD.

11. ALL EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY ON THE DATE HEREOF WHO HAVE NOT VOLUNTARILY TERMINATED THEIR EMPLOYMENT OR WHO HAVE NOT BEEN DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

12. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE APPLICANT IN THEIR EMPLOYMENT RELATIONS WITH THE RESPONDENT.

13. THE MATTER IS REFERRED TO THE REGISTRAR.

14. IN VIEW OF THE ACTIVITIES OF THE RESPONDENT AND ITS OFFICIALS, THE BOARD WISHES TO CAUTION THE RESPONDENT AGAINST ENGAGING IN SIMILAR ACTIVITIES PRIOR TO THE NEW REPRESENTATION VOTE WHICH IS TO BE CONDUCTED IN THIS MATTER. THE RESPONDENT AND ITS OFFICIALS SHOULD BE VERY CIRCUMSPECT IN ITS DISCUSSIONS WITH ANY OF ITS EMPLOYEES CONCERNING THE RIGHT OF THE APPLICANT TO REPRESENT THEM. IN VIEW OF WHAT HAS TRANPIRED IN THIS CASE, THE RESPONDENT'S OFFICIALS SHOULD REFRAIN FROM CONGREGATING IN THE VOTING AREA ON THE DATE THE VOTE IS TAKEN.

DECISION OF BOARD MEMBER F. W. MURRAY: OCTOBER 6, 1971.

I DISSENT.

WHILE I AGREE WITH THE RESULTS OF THE DECISION I DO NOT AGREE WITH SOME OF THE CONCLUSIONS DRAWN BY MY COLLEAGUES. I FIND THAT SOME OF THE ACTIONS OF THE RESPONDENT CONSTITUTED UNDUE INFLUENCY AND ACCORDINGLY I WOULD DIRECT THAT A NEW REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY OUTLINED IN THE BOARD'S MAJORITY DECISION.

975-71-R: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT & GENERAL WORKERS (APPLICANT) V. CROSBY VOLKSWAGEN LIMITED (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: F. C. JOHNSTON AND MANCEL WAUGH FOR THE APPLICANT; H. A. BERESFORD AND GORDON CROSBY FOR THE RESPONDENT.

DECISION OF THE BOARD: OCTOBER 7, 1971.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. IN SUPPORT OF ITS APPLICATION, THE APPLICANT FILED EVIDENCE OF MEMBERSHIP ON BEHALF OF 15 PERSONS, ALL OF WHICH NAMES CORRESPOND WITH THE 22 NAMES APPEARING ON THE RESPONDENT'S LIST. THIS EVIDENCE OF MEMBERSHIP CONSISTS OF "COMBINATION" APPLICATIONS FOR MEMBERSHIP AND RECEIPTS. THE RECEIPT PORTION ON ONE OF SUCH CARDS FAILS TO DISCLOSE ANY MONETARY PAYMENT, THE NAME OF THE COLLECTOR OR THE COUNTER-SIGNATURE OF THE PAYOR. SUCH EVIDENCE OF MEMBERSHIP, HAVING FAILED TO MEET THE REQUIREMENTS OF THE BOARD IN THIS REGARD, IS ACCORDINGLY REJECTED SUCH THAT THE APPLICANT'S EVIDENCE OF MEMBERSHIP IS REDUCED TO 14 PERSONS THUS DISPLACING THE APPLICANT FROM A POSITION OF OUTRIGHT CERTIFICATION TO ONE NECESSITATING THE BOARD TO SEEK THE CONFIRMATORY ORDER OF A REPRESENTATION VOTE.

4. IN VIEW OF THE APPLICANT'S COUNT POSITION, IT WILL THEREFORE NOT BE NECESSARY TO INQUIRE INTO WHETHER THE ABSENCE OF COUNTERSIGNATURES ON THE RECEIPT PORTIONS OF THE REMAINING EVIDENCE OF MEMBERSHIP SO WEAKENS SUCH EVIDENCE SO AS TO CAUSE THE BOARD TO DIRECT THE TAKING OF A REPRESENTATION VOTE, RATHER THAN CERTIFYING THE APPLICANT OUTRIGHT. (IN THIS REGARD, SEE THE STERLING TILE COMPANY CASE OLRB M.R. FEBRUARY 1970, P. 1346 AND THE MERCURY TERRAZZO LIMITED CASE OLRB M.R. JUNE 1970, P. 291).

5. AS REGARDS THE REJECTED CARD, IT IS THE SUBMISSION OF COUNSEL FOR THE RESPONDENT THAT "THE APPLICATION SHOULD BE DISMISSED INASMUCH AS A RESPONSIBLE UNION OFFICIAL HAS SUBMITTED AN IMPROPER DECLARATION OF MEMBERSHIP." IN SUPPORT OF THIS POSITION, THE FRANK LICARI AND SONS CASE OLRB M.R. APRIL AT P.57 AND THE KING OPTICAL COMPANY CASE OLRB M.R. DECEMBER 1967 AT P.824, WERE CITED TO THE BOARD.

6. IN OUR OPINION, THE FACTS IN THE INSTANT CASE ARE CLEARLY DISTINGUISHABLE FROM THOSE IN THE CASES REFERRED TO THE BOARD. IN THE FRANK LICARI AND SONS CASE (SUPRA), THE APPLICATION FOR CERTIFICATION WAS FILED UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT. AT THE TIME THE EMPLOYEES SIGNED THE EVIDENCE OF MEMBERSHIP, WHICH IN THAT CASE TOOK THE FORM OF CERTIFICATES, IT WAS DISCLOSED THAT THE BLANK SPACES PROVIDING FOR THE INSERTION OF THE AMOUNT OF MONTHLY DUES PAID, THE MONTH AND YEAR PAID AND THE DATE OF INITIATION HAD NOT BEEN FILLED IN. IN THOSE CIRCUMSTANCES THE BOARD REJECTED OUTRIGHT THE EVIDENCE OF MEMBERSHIP FILED ON THE BASIS, INTER ALIA, THAT THESE CERTIFICATES DID NOT REPRESENT THE STATEMENTS OF

THE EMPLOYEES CONCERNED. IN THE KING OPTICAL CASE (SUPRA), A CONTINUATION OF HEARING HELD FOR THE SPECIFIC PURPOSE OF INQUIRING INTO THE ISSUE OF NON-PAYMENT BY A SIGNATORY TO A MEMBERSHIP CARD, THE BOARD UPON FINDING THAT HE DID NOT PAY THE REQUIRED DOLLAR IN CONNECTION WITH HIS APPLICATION FOR MEMBERSHIP, CONCLUDED THAT THE FORM 8 DECLARATION WAS INCORRECT AND THEREFORE REFUSED TO ACCEPT THE REMAINING EVIDENCE OF MEMBERSHIP FILED THEREIN. IN THE INSTANT CASE, WE NOTE THE ABSENCE OF ANY ALLEGATIONS OF NON-PAYMENT NOR WAS THERE ANY EVIDENCE SUBMITTED TO THIS EFFECT.

7. HAVING REGARD TO ALL THE CIRCUMSTANCES, WE FIND THAT THE FAILURE TO FILL OUT THE RECEIPT PORTION OF THE REJECTED CARD, DID NOT AMOUNT TO SUCH GROSS CARELESSNESS AS TO AFFECT THE VALIDITY OF THE REMAINDER OF THE MEMBERSHIP EVIDENCE.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON SEPTEMBER 24, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

10. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE APPLICANT IN THEIR EMPLOYMENT RELATIONS WITH THE RESPONDENT.

11. THE MATTER IS REFERRED TO THE REGISTRAR.

341-71-U: LOCAL 1966, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A.F.L. - C.I.O. & C.L.C. (COMPLAINANT) v. JOHNSON CONTROLS LIMITED (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS J.D. BELL AND P.J. O'KEEFE.

APPEARANCES AT THE HEARING: LORNE MORPHY AND B. EVANS FOR THE COMPLAINANT; THOMAS G. HEINTZMAN, THOMAS PATTERSON AND ERNEST CHAPLIN FOR THE RESPONDENT.

DECISION OF THE BOARD:

OCTOBER 19, 1971.

1. THIS IS AN APPLICATION UNDER SECTION 79 (FORMERLY SECTION 65) OF THE LABOUR RELATIONS ACT ALLEGING A VIOLATION OF SECTIONS 58(A), (B) AND (C) AND SECTION 70((FORMERLY SECTIONS 50(A), (B) AND (C) AND SECTION 59) OF THE ACT. AT THE OPENING OF THE HEARING THE COMPLAINANT WITHDREW THE APPLICATION INSOFAR AS IT RELATES TO SECTION 70(1) OF THE ACT. SECTION 58(A), (B) AND (C) PROVIDES AS FOLLOWS:

58. NO EMPLOYER, EMPLOYERS' ORGANIZATION OR PERSON ACTING ON BEHALF OF AN EMPLOYER OR AN EMPLOYERS' ORGANIZATION,

- (A) SHALL REFUSE TO EMPLOY OR TO CONTINUE TO EMPLOY A PERSON, OR DISCRIMINATE AGAINST A PERSON IN REGARD TO EMPLOYMENT OR ANY TERM OR CONDITION OF EMPLOYMENT BECAUSE THE PERSON WAS OR IS A MEMBER OF A TRADE UNION OR WAS OR IS EXERCISING ANY OTHER RIGHTS UNDER THIS ACT;
- (B) SHALL IMPOSE ANY CONDITION IN A CONTRACT OF EMPLOYMENT OR PROPOSE THE IMPOSITION OF ANY CONDITION IN A CONTRACT OF EMPLOYMENT THAT SEEKS TO RESTRAIN AN EMPLOYEE OR A PERSON SEEKING EMPLOYMENT FROM BECOMING A MEMBER OF A TRADE UNION OR EXERCISING ANY OTHER RIGHTS UNDER THIS ACT; OR
- (C) SHALL SEEK BY THREAT OF DISMISSAL, OR BY ANY OTHER KIND OF THREAT, OR BY THE IMPOSITION OF A PECUNIARY OR OTHER PENALTY, OR BY ANY OTHER MEANS TO COMPEL AN EMPLOYEE TO BECOME OR REFRAIN FROM BECOMING OR TO CONTINUE TO BE OR TO CEASE TO BE A MEMBER OR OFFICER OR REPRESENTATIVE OF A TRADE UNION OR TO CEASE TO EXERCISE ANY OTHER RIGHTS UNDER THIS ACT.

2. THE FACTS OF THIS CASE ARE AS FOLLOWS: THE RESPONDENT COMPANY CARRIES ON BUSINESS THROUGHOUT CANADA AND HAS APPROXIMATELY 475 EMPLOYEES. OF THE 475 EMPLOYEES THERE ARE 100 NON-UNION EMPLOYEES. THE COMPANY HAS 23 COLLECTIVE AGREEMENTS COVERING ITS ORGANIZED EMPLOYEES.

3. THE COMPANY FOR SOME TIME HAD MAINTAINED A PENSION PLAN WITH THE NORTH AMERICAN LIFE ASSURANCE COMPANY TO WHICH THE COMPANY AND THE EMPLOYEES MADE CONTRIBUTIONS. THIS PLAN HAD BEEN IMPLEMENTED BY THE COMPANY FOR ITS EMPLOYEES. EMPLOYEES WERE ELIGIBLE TO JOIN THE PLAN UPON ATTAINING THE AGE OF 25 AND UPON THEIR BEING EMPLOYED BY THE COMPANY FOR 3 YEARS.

4. IN SEPTEMBER OF 1967 THE COMPANY DETERMINED THAT IT WAS DUPLICATING PAYMENTS AS A RESULT OF CONTRIBUTIONS TO A NUMBER OF DIFFERENT PENSION PLANS. APART FROM THE PAYMENTS TO THE NORTH AMERICAN LIFE ASSURANCE PLAN THE COMPANY MADE PAYMENTS TO THE CANADA PENSION PLAN AND TO UNION NEGOTIATED PLANS. THE COMPANY THROUGH ITS PENSION CONSULTANTS PROCEEDED TO DISCUSS ITS POSITION WITH THE RELEVANT GOVERNMENT AUTHORITIES IN CORRESPONDENCE WHICH ENSUED OVER A PERIOD OF TIME. THESE EFFORTS TO AVOID DUPLICATION OF BENEFITS COMMENCED PRIOR TO THE TIME THAT THE COMPLAINANT UNION WAS CERTIFIED TO REPRESENT THE AGGRIEVED EMPLOYEES WHO ARE THE SUBJECT OF THIS APPLICATION.

5. THE COMPANY SUBSEQUENTLY NEGOTIATED 3 COLLECTIVE AGREEMENTS WITH THE COMPLAINANT UNION BUT CONTEMPORANEOUSLY MAINTAINED THE NORTH AMERICAN LIFE ASSURANCE PLAN IN EFFECT FOR EMPLOYEES COVERED BY THE AGREEMENTS.

6. CORRESPONDENCE BETWEEN THE COMPANY'S PENSION PLAN CONSULTANTS AND THE VARIOUS GOVERNMENTAL AUTHORITIES CONTINUED AND ON NOVEMBER 7, 1969 THE CONSULTANTS FOR THE PENSION PLAN WROTE TO THE DEPARTMENT OF NATIONAL REVENUE AND SUBMITTED A PLAN DATED OCTOBER 1, 1969 FOR CHANGES TO THE PENSION PLAN WHICH PROVIDED INTER ALIA:

"DUE TO THE INCREASED NUMBER OF UNION AGREEMENTS CALLING FOR JOHNSON CONTROLS LIMITED CONTRIBUTION TO PENSIONS, ETC., WE HAVE REVIEWED THE COMPANY COMMITMENTS AS FAR AS OUR PENSION PLAN IS CONCERNED.

SOME EMPLOYEES, HERETOFORE, HAVE HAD AN ADVANTAGE OVER OTHERS INASMUCH AS THE COMPANY HAS BEEN CONTRIBUTING INTO UNION PENSION PLANS AND AT THE SAME TIME CONTRIBUTING INTO THE COMPANY PENSION PLAN FOR THE SAME PERSON.

1. EFFECTIVE IMMEDIATELY, NO NEW MEMBERS TO THE COMPANY PENSION PLAN WILL BE ACCEPTED WHERE THAT EMPLOYEE IS COVERED WITH

A PENSION PLAN WITH A UNION TO WHICH JOHNSON CONTROLS LIMITED MAKES CONTRIBUTION.

...

5. WHEN UNION EMPLOYEES, NOW ON THE COMPANY PENSION PLAN BUT HAVING NO PENSION WITH THEIR UNIONS, FINALLY GET A UNION PENSION TO WHICH JOHNSON CONTROLS LIMITED MUST CONTRIBUTE, THEN THE PROVISIONS OF PARAGRAPHS 1, 2, 3, AND 4 WILL APPLY."

AT THAT TIME IT WAS OBVIOUSLY THE COMPANY'S INTENT TO MAINTAIN UNION EMPLOYEES IN THE NORTH AMERICAN LIFE ASSURANCE COMPANY PENSION PLAN UNTIL SUCH TIME AS THOSE EMPLOYEES GAINED A PENSION PLAN THROUGH COLLECTIVE BARGAINING. THAT IS EVIDENCED BY PARAGRAPH 5 REFERRED TO IN THE OCTOBER 1, 1969 PLAN.

7. HOWEVER, ON NOVEMBER 17, 1969, THE DEPARTMENT OF NATIONAL REVENUE ADVISED THE COMPANY'S CONSULTANTS THAT "CLAUSE 5 OF THE DRAFT APPEARS TO BE A CONTINUING CASH-OUT PROVISION AND AS SUCH WOULD NOT BE ACCEPTABLE."

8. FURTHER CORRESPONDENCE ENSUED BETWEEN THE CONSULTANTS AND THE COMPANY AND IT APPEARS THAT THE CONSULTANTS DISCUSSED THE MATTER WITH THE PENSION COMMISSION OF ONTARIO. AS A RESULT OF THOSE DISCUSSIONS THE CONSULTANTS IN A LETTER TO THE RESPONDENT DATED AUGUST 27, 1970, RECOMMENDED INTER ALIA:

1. "EMPLOYEES BELONGING TO A BARGAINING UNIT COVERED BY A COLLECTIVE BARGAINING AGREEMENT AND WHO ARE NOT PARTICIPATING IN THE PLAN AS OF DECEMBER 31, 1969, SHALL BE EXCLUDED FROM PARTICIPATING IN JOHNSON CONTROLS LTD.'S PENSION PLAN."

THERE WERE CERTAIN OTHER DETAILED RECOMMENDATIONS AND IN THAT LETTER OF AUGUST 27, 1970, THE CONSULTANTS FURTHER ADVISED:

"IT SHOULD BE CLEARLY UNDERSTOOD THAT THE ABOVE RECOMMENDATION AFFECTS IN ALL RESPECTS NOT ONLY THOSE EMPLOYEES WHO ARE MEMBERS OF A BARGAINING UNIT COVERED BY A COLLECTIVE

BARGAINING AGREEMENT FOR WHOM JOHNSON CONTROLS LTD. MAKES PENSION CONTRIBUTIONS TO UNION FUNDS, BUT ALSO TO THE SAME TYPE OF EMPLOYEE FOR WHOM JOHNSON CONTROLS LTD. IS NOT CURRENTLY MAKING A CONTRIBUTION TO A UNION PENSION FUND. WE FEEL THAT IT IS IMPORTANT TO BROADEN THE AFFECTED CATEGORY NOW, BECAUSE UNIONS IN GENERAL ARE NOW PLACING PRIMARY IMPORTANCE ON PENSIONS AND THOSE UNIONS WHO CURRENTLY DO NOT HAVE PLANS WILL NO DOUBT HAVE THEM IN THE FUTURE. THE LEVEL OF NEGOTIATED PENSION BENEFIT IS INCREASING AT A FAST RATE IN RESPECT TO BOTH CURRENT AND PAST SERVICES."

9. ON OCTOBER 14, 1970, AN AMENDMENT TO THE PLAN WAS SUBMITTED TO THE PENSION COMMISSION OF ONTARIO WHICH PROVIDED INTER ALIA:

1. "MEMBERS OF THE PENSION PLAN AS OF DECEMBER 31ST, 1969 WHO ARE MEMBERS OF A BARGAINING UNIT COVERED BY A COLLECTIVE BARGAINING AGREEMENT, AND WHO HAVE NOT ATTAINED AGE 45 AND WHO HAVE NOT COMPLETED 10 YEARS CONTINUOUS SERVICE AT THIS DATE, SHALL BE TREATED AS A PARTIAL PLAN CANCELLATION UNDER THE ABOVE CONTRACT.

...

4. EMPLOYEES WHO ARE NOT CURRENTLY PARTICIPANTS IN THE PENSION PLAN WILL NO LONGER BE ELIGIBLE FOR SUBSEQUENT PARTICIPATION IF THEY ARE MEMBERS OF A BARGAINING UNIT COVERED BY A COLLECTIVE BARGAINING AGREEMENT."

SUBSEQUENT CORRESPONDENCE WITH THE GOVERNMENT AUTHORITIES AT BOTH THE FEDERAL AND PROVINCIAL LEVEL FOLLOWED AND CERTAIN OTHER CHANGES WHICH ARE NOT RELEVANT TO THIS APPLICATION WERE MADE AND THE AMENDED PLAN WAS FINALLY APPROVED IN DECEMBER OF 1970 BY THOSE AUTHORITIES.

10. THE EVIDENCE GIVEN AT THE HEARING INDICATED THAT THE AG-GRIEVED EMPLOYEES WERE REMOVED FROM PRESENT AND FUTURE PARTICIPATION IN THE PLAN ON THE BASIS OF THEIR BEING MEMBERS OF A TRADE UNION.

11. IN DECEMBER OF 1970 WHEN THE COMPANY AND THE COMPLAINANT UNION COMMENCED NEGOTIATIONS FOR THE 1971 COLLECTIVE AGREEMENTS THE

COMPANY ADVISED THE UNION THAT AS OF DECEMBER 31ST THEY HAD CHANGED THE PENSION PLAN BY REMOVING EMPLOYEES WHO WERE IN THE BARGAINING UNIT. OF THE 40 EMPLOYEES IN THE BARGAINING UNIT REPRESENTED BY THE COMPLAINANT THERE WERE 8 EMPLOYEES WHO WERE DIRECTLY AFFECTED. THE BALANCE OF THE EMPLOYEES IN THE BARGAINING UNIT HAD NOT BEEN EMPLOYED FOR THE PERIOD OF 3 YEARS WHICH WAS NECESSARY TO JOIN THE PLAN AND THESE PERSONS ARE DEPRIVED OF THEIR RIGHT TO PARTICIPATE IN THE PLAN. OF THE 8 REMAINING EMPLOYEES 3 HAD RIGHTS THAT WERE LOCKED IN AND THEY REMAINED IN THE PLAN AND THE 5 REMAINING EMPLOYEES WERE PREVENTED FROM CONTINUING THEIR PARTICIPATION IN THE PLAN.

12. SUBSEQUENTLY, THE COMPLAINANT AND THE COMPANY CONTINUED NEGOTIATIONS FOR A COLLECTIVE AGREEMENT. DURING NEGOTIATIONS THE COMPANY OFFERED TO THE UNION A SKELTON PENSION PLAN AS THE BASIS FOR FUTURE NEGOTIATIONS. THE COMPANY'S UNCONTRADICTED EVIDENCE IS THAT THE UNION WISHED TO MAINTAIN THE FORMER PLAN OR ITS EQUIVALENT AND DID NOT WANT TO TAKE THE TIME TO NEGOTIATE A NEW PLAN. THE EVIDENCE FURTHER INDICATED THAT THE COMPANY WOULD NOT PROVIDE THE UNION WITH THE DETAILS OF THE NORTH AMERICAN LIFE ASSURANCE PENSION PLAN. THE MATTER WAS RESOLVED AND THE MINUTES OF SETTLEMENT DATED MARCH 3, 1971 PROVIDED, "THAT FAILURE TO REACH AGREEMENT WITH A PENSION PLAN FOR BARGAINING UNIT EMPLOYEES DOES NOT REFLECT THE UNION RIGHT TO REFER THE PENSION PLAN TO THE ONTARIO LABOUR RELATIONS BOARD FOR ADJUDICATION."

13. THE COMPANY'S EVIDENCE FURTHER INDICATED THAT THE AGGRIEVED EMPLOYEES RECEIVED HIGHER WAGES THAN NON-UNION EMPLOYEES WHO WERE PERMITTED TO REMAIN IN THE PLAN AND THE COMPANY INDICATED THAT IF THE UNION HAD AGREED UPON A PENSION PLAN THEN THAT WOULD HAVE BEEN A FACTOR IN REDUCING THE NEGOTIATED WAGE INCREASES. THE COMPANY'S POSITION IS THAT THEY WERE PREPARED TO PROVIDE A PENSION PLAN TO THE EMPLOYEES BUT IN THOSE CIRCUMSTANCES THEY WOULD NOT HAVE GIVEN THE WAGE INCREASE THAT THEY DID AND THAT THE WAGE INCREASE WAS IN LIEU OF PENSION BENEFITS.

14. THE MATTER WAS ABLY ARGUED BY BOTH COUNSEL FOR THE COMPLAINANT AND COUNSEL FOR THE RESPONDENT COMPANY. COUNSEL FOR BOTH PARTIES REFERRED TO A NUMBER OF DECISIONS IN THE COURTS OF THE UNITED STATES IN SUPPORT OF THEIR RESPECTIVE POSITIONS. IN ADDITION, THERE ARE OTHER CASES IN THAT JURISDICTION THAT WE HAVE CONSIDERED. WE PROPOSE TO REVIEW THOSE CASES WITH THE FULL REALIZATION THAT THERE ARE DIFFERENCES BETWEEN THE LEGISLATION IN THE UNITED STATES AND THE ONTARIO LEGISLATION.

15. A SIMILAR ISSUE FIRST AROSE IN NATIONAL LABOUR RELATIONS BOARD V. NASH-FINCH COMPANY [25 LC ¶68,316] (8TH CIR., 1954). IN THAT CASE THE UNION WAS CERTIFIED ON MAY 29, 1951. AFTER THE CER-

TIFICATION THE PARTIES BARGAINED AND ENTERED INTO A COLLECTIVE AGREEMENT ON JULY 23, 1951. DURING A REPRESENTATION VOTE PRIOR TO CERTIFICATION THE COMPANY TOLD CERTAIN EMPLOYEES THAT IF THEY SELECTED THE UNION TO REPRESENT THEM THE INSURANCE BENEFITS AND CHRISTMAS BONUS WOULD BE DISCONTINUED. ONE OF THE EMPLOYEES WHO HAD HEARD THE STATEMENT REPRESENTED THE UNION AT THE BARGAINING CONFERENCE. THE EMPLOYER AFTER THE EXECUTION OF THE AGREEMENT TERMINATED THE HOSPITAL AND GROUP INSURANCE BENEFITS OF THE UNION EMPLOYEES AND DID NOT PAY THEM THE CHRISTMAS BONUS. THESE BENEFITS WERE PAID TO OTHER NON-UNION EMPLOYEES ALTHOUGH THE NON-UNION EMPLOYEES DID NOT RECEIVE THE WAGE INCREASES.

16. THE NATIONAL LABOR RELATIONS FOUND THAT THE EMPLOYEE COMMITTED UNFAIR LABOUR PRACTICES AND CONCLUDED THAT IT WAS THE DUTY OF THE EMPLOYER NOT TO TERMINATE THE BENEFITS WITHOUT HAVING BARGAINED WITH THE UNION WITH RESPECT TO THEIR DISCONTINUANCE, AND THAT THE TERMINATION OF THE BENEFITS WAS A VIOLATION OF THE ORGANIZATIONAL RIGHTS OF THE EMPLOYEES CONTRARY TO SECTION 8(A)(1) OF THE ACT, A REFUSAL TO BARGAIN COLLECTIVELY IN VIOLATION OF SECTION 8(A)(5) OF THE ACT AND AN ATTEMPT TO DISCOURAGE MEMBERSHIP IN A LABOUR ORGANIZATION IN VIOLATION OF SECTION 8(A)(3). FOR CONVENIENCE WE SET OUT SECTION 8(A)(3) WHICH IS THE DISCRIMINATION SECTION IN THE NATIONAL LABOR RELATIONS ACT. THAT SECTION PROVIDES:

8(A)(3) "IT SHALL BE AN UNFAIR LABOR PRACTICE FOR AN EMPLOYER - BY DISCRIMINATION IN REGARD TO HIRE OR TENURE OF EMPLOYMENT OR ANY TERM OR CONDITION OF EMPLOYMENT TO ENCOURAGE OR DISCOURAGE MEMBERSHIP IN ANY LABOR ORGANIZATION: * * *

17. ON A PETITION FOR ENFORCEMENT OF THE ORDER OF THE NATIONAL LABOR RELATIONS BOARD TO THE UNITED STATES COURT OF APPEAL SANBORNE C.J. SPEAKING FOR THE COURT STATED AT PAGE 1094:

[ALL EMPLOYER OBLIGATIONS COVERED BY CONTRACT -
NO ADDITIONAL OBLIGATIONS UNDER NLRA]

"WE CONSIDER UNTENABLE THE POSITION OF THE BOARD THAT, ALTHOUGH THE RESPONDENT HAD ASSUMED NO CONTRACTUAL OBLIGATION TO CONTINUE THE INSURANCE AND BONUS BENEFITS WHICH IT HAD FORMERLY PROVIDED FOR THE EMPLOYEES REPRESENTED BY THE UNION, THE RESPONDENT WAS OBLIGATED BY LAW TO CONTINUE SUCH BENEFITS UNLESS AND UNTIL IT TERMINATED THEM AFTER FURTHER BARGAINING WITH THE UNION.

BOTH THE UNION AND THE RESPONDENT IN THEIR BARGAINING WERE NEGOTIATING FOR AN AGREEMENT COMPLETELY COVERING THE OBLIGATIONS OF THE RESPONDENT TOWARD ITS UNION EMPLOYEES DURING THE PERIOD JUNE 1, 1951, TO MAY 31, 1952. THE QUESTION OF MAINTENANCE OF THE INSURANCE AND BONUS BENEFITS WAS NOT IGNORED IN THE NEGOTIATIONS BETWEEN THE PARTIES TO THE AGREEMENT. THE UNION IN THE FIRST DRAFT OF A PROPOSED CONTRACT HAD INSERTED A "MAINTENANCE OF STANDARD" PROVISION WHICH WOULD HAVE REQUIRED THE RESPONDENT TO MAINTAIN ITS INSURANCE AND BONUS PLANS FOR ITS UNION EMPLOYEES. THIS PROVISION, HOWEVER, WAS UNACCEPTABLE TO, AND WAS NOT ACCEPTED BY, THE RESPONDENT.

WHERE PARTIES TO A CONTRACT HAVE DELIBERATELY AND VOLUNTARILY PUT THEIR ENGAGEMENT IN WRITING IN SUCH TERMS AS IMPORT A LEGAL OBLIGATION WITHOUT UNCERTAINTY AS TO THE OBJECT OR EXTENT OF SUCH ENGAGEMENT, IT IS CONCLUSIVELY PRESUMED THAT THE ENTIRE ENGAGEMENT OF THE PARTIES AND THE EXTENT AND MANNER OF THEIR UNDERTAKING HAVE BEEN REDUCED TO WRITING. FORD V. LURIA STEEL & TRADING CORP., 8 CIR., 192 F. 2D 880, 884 AND CASES CITED.

[BOARD MAY NOT REWRITE CONTRACT]

"THE RESPONDENT, WE THINK, MAY NOT BE CONVICTED OF AN UNFAIR LABOR PRACTICE FOR DOING NO MORE AND NO LESS FOR ITS UNION EMPLOYEES THAN ITS COLLECTIVE BARGAINING AGREEMENT WITH THEM CALLED FOR. "AND IT IS * * * CLEAR THAT THE BOARD MAY NOT, EITHER DIRECTLY OR INDIRECTLY, COMPEL CONCESSIONS OR OTHERWISE SIT IN JUDGMENT UPON THE SUBSTANTIVE TERMS OF COLLECTIVE BARGAINING AGREEMENTS." NATIONAL LABOR RELATIONS BOARD V. AMERICAN NATIONAL INSURANCE CO., 343 U.S. 395, 404 [21 LABOR CASES 66,980]. WHETHER THE CONTRACT IN SUITE SHOULD HAVE CONTAINED THE CLAUSE PROPOSED BY THE UNION REQUIRING THE MAINTENANCE OF EXISTING STANDARDS OF EMPLOYMENT, WAS "AN ISSUE FOR DETERMINATION ACROSS THE BARGAINING TABLE, NOT BY THE BOARD." Id., PAGE 409 OF 343 U.S.

IT SEEMS TO US THAT WHAT THE BOARD HAS DONE, UNDER THE GUISE OF REMEDYING UNFAIR LABOR PRACTICES, IS TO ATTEMPT TO BESTOW UPON THE RESPONDENT'S UNION

EMPLOYEES THE BENEFITS WHICH IT BELIEVES THE UNION SHOULD HAVE OBTAINED BUT FAILED TO OBTAIN FOR THEM AS A RESULT OF ITS COLLECTIVE BARGAINING WITH THE RESPONDENT ON THEIR BEHALF."

[RULING]

"OUR CONCLUSION IS THAT THE BOARD IS NOT ENTITLED TO THE ENFORCEMENT OF ITS ORDER. ITS PETITION FOR ENFORCEMENT IS DENIED."

18. THE INSTANT CASE IS DISTINGUISHABLE FROM THE NASH-FINCH CASE, SUPRA. IN THAT CASE THE AGREEMENT WAS A FIRST AGREEMENT AND IT IS OBVIOUS THAT ALL MATTERS WERE "PLACED ON THE TABLE" FOR THE PURPOSE OF NEGOTIATION AND THE REASONABLE INFERENCE IS THAT THE COLLECTIVE AGREEMENT REPRESENTED THE TOTAL ARRANGEMENT BETWEEN THE PARTIES. IN THIS CASE THE PENSION PLAN HAD CO-EXISTED SEPARATELY FROM THE COLLECTIVE AGREEMENT FOR A PERIOD OF THREE YEARS, AND AFTER CONSIDERING THAT FACT AND THE AGREEMENT OF THE PARTIES TO HAVE THIS BOARD DECIDE THE MATTER WE ARE NOT PREPARED TO DRAW THE INFERENCE THAT THE COLLECTIVE AGREEMENT REPRESENTED THE TOTAL ARRANGEMENT BETWEEN THE PARTIES.

19. IN INTERMOUNTAIN EQUIPMENT COMPANY V. NATIONAL LABOR RELATIONS BOARD, [31 LC ¶70,386] (9TH CIR., 1956), A SIMILAR SITUATION AROSE. IN THAT CASE THE COURT DETERMINED THAT AN EMPLOYER'S DISCONTINUANCE OF AN ANNUAL BONUS AND SICK LEAVE BENEFITS FOR UNION MEMBERS WHILE RETAINING SUCH BENEFITS FOR NON-UNION EMPLOYEES DID NOT CONSTITUTE AN UNFAIR LABOUR PRACTICE WHERE ONLY UNION MEMBERS RECEIVED SUBSTANTIAL BENEFITS AS A RESULT OF BARGAINING NEGOTIATIONS. THE COLLECTIVE AGREEMENT DID NOT INCLUDE PROVISIONS FOR BONUS OR SICK LEAVE AND THE COURT FURTHER FOUND THAT DISCRIMINATION DID NOT ENCOURAGE OR DISCHURAGE UNION MEMBERSHIP.

20. AFTER REFERRING TO CERTAIN CASES RELIED UPON BY THE NATIONAL LABOR RELATIONS BOARD THE COURT STATED AT PAGE 92,979:

"BOTH THE ABOVE CASES ARE DISTINGUISHABLE FROM THE PRESENT CASE BECAUSE HERE THE UNION EMPLOYEES HAD OBTAINED SUBSTANTIAL BENEFITS WHICH HAD NOT ACCRUED TO THE NON-UNION EMPLOYEES WHO WERE NOT COVERED BY THE CONTRACT, AND THE NON-UNION EMPLOYEES WHO RECEIVED THE BENEFITS DENIED UNION MEMBERS WERE OUTSIDE THE SCOPE OF THE BARGAINING UNIT; THE GENERAL MOTORS AND RADIO OFFICERS' UNION CASES, ON THE OTHER HAND, INVOLVED DISCRIMINATION AMONG EMPLOYEES DOING

EXACTLY THE SAME WORK FOR EXACTLY THE SAME PAY
SOLELY ON THE BASIS OF UNION MEMBERSHIP.

...

[TYPE OF DISCRIMINATION REQUIRED]

"THUS THESE CASES FAIL TO ESTABLISH A BASIS FOR THE BOARD'S CONCLUSION THAT THE ASSURANCES OF THE EMPLOYER, WHICH THE BOARD HAS FOUND DID NOT CONSTITUTE A CONTRACT BETWEEN THE PARTIES, WILL SUPPORT A FINDING OF DISCRIMINATION AGAINST UNION MEMBERS, PARTICULARLY WHERE THE UNION MEMBERS HAD RECEIVED BENEFITS WHICH NON-UNION MEMBERS DID NOT. IT SHOULD BE NOTED THAT UNDER THE STATUTE HERE DISCRIMINATION AMONG EMPLOYEES IS NOT AN UNFAIR LABOR PRACTICE, IT IS ONLY WHERE THE DISCRIMINATION ENCOURAGES OR DISCOURAGES UNION MEMBERSHIP THAT AN UNFAIR LABOR PRACTICE OCCURS. WHILE SUCH A PURPOSE ON THE PART OF THE EMPLOYER MAY BE INFERRED FROM THE CIRCUMSTANCES, THE ONLY CIRCUMSTANCE HERE TENDING TO SHOW SUCH DISCRIMINATION IS THE DENIAL OF CERTAIN BENEFITS WHICH THE UNION HAD NOT BARGAINED FOR ON BEHALF OF THE MEMBERS OF ITS BARGAINING UNIT. AS POINTED OUT ABOVE, THE CASES CITED BY THE BOARD DO NOT SUPPORT THE CONCLUSION THAT ON THE FACTS OF THIS CASE, DISCRIMINATION HAVING THE PURPOSE OF EFFECT OF DISCOURAGING UNION MEMBERSHIP IS SHOWN. TO THE CONTRARY, AS SUGGESTED BY THE CHAIRMAN OF THE BOARD IN HIS DISSENTING OPINION, THAT THE EMPLOYER HERE ACTED FROM NO ANTI-UNION MOTIVATION IS SHOWN BY THE SUBSTANTIAL BENEFITS OBTAINED BY THE UNION UNDER THE CONTRACT FOR ITSELF IN THE FORM OF THE UNION SECURITY PROVISION AND FOR ITS MEMBERS IN A WAGE INCREASE, PAID HOLIDAYS AND OTHER BENEFITS."

THE COURT THEN REFERRED WITH APPROVAL TO THE DECISION IN THE NASH-FINCH COMPANY CASE, SUPRA.

21. THE INTERMOUNTAIN CASE IS SIMILAR TO THE INSTANT CASE BECAUSE THE EMPLOYEES IN THE INSTANT CASE RECEIVED ADDITIONAL BENEFITS IN THE FORM OF WAGES WHICH NON-UNION MEMBERS DID NOT RECEIVE.

22. WE THINK IT IS IMPORTANT AT THIS TIME TO INDICATE THAT IN REVIEWING THE CASES THAT SOME DISTINCTION SHOULD BE MADE BETWEEN DETERMINING WHETHER THERE WAS A VIOLATION AND WHETHER THERE SHOULD BE A REMEDY.

23. IN DURA CORPORATION V. NATIONAL LABOR RELATIONS BOARD, [56 LC ¶12,111] 380 F. 2d 970 (6TH CIR., 1967), THE COMPANY MAINTAINED A PROFIT SHARING PLAN FOR ITS EXECUTIVE AND SALARIED PERSONNEL WHICH PROVIDED AS IN THIS CASE, THAT THE PLAN WAS RESTRICTED TO "ANY SALARIED EMPLOYEE WHO IS NOT A MEMBER OF A COLLECTIVE BARGAINING UNIT RECOGNIZED BY SUCH EMPLOYER". DURING BARGAINING THE UNION ASKED THAT MEMBERS BE CONTINUED IN THE PLAN AND THE COMPANY REFUSED ON THE GROUND THAT THE INVOLVED EMPLOYEES BY REASON OF BEING MEMBERS OF A COLLECTIVE BARGAINING UNIT WERE INELIGIBLE TO REMAIN IN THE PROFIT SHARING PLAN. THE PARTIES THEN SIGNED A COLLECTIVE AGREEMENT. THE NATIONAL LABOR RELATIONS BOARD FOUND THAT THE PROFIT SHARING PLAN BY ITS OWN LANGUAGE WAS PER SE VIOLATION OF THE ACT IN THAT THE NATURAL CONSEQUENCE OF THE EMPLOYER'S ACTION WAS THE DISCOURAGEMENT OF UNION MEMBERSHIP.

24. IN ENFORCING THE NATIONAL LABOUR RELATIONS ORDER THE COURT STATED AT PAGE 19,673:

"IN GAYNOR NEWS CO. V. NLRB, [25 LC ¶68,111] 347 U.S. 17 (ONE OF THREE CASES CONSOLIDATED IN RADIO OFFICERS', SUPRA), THE COMPANY GRANTED WAGE AND VACATION BENEFITS SOLELY TO UNION MEMBERS. THE SUPREME COURT SAID, AT PAGE 46:

"IN GAYNOR, THE SECOND CIRCUIT ALSO PROPERLY APPLIED THIS PRINCIPLE. THE COURT THERE HELD THAT DISPARATE TREATMENT OF EMPLOYEES BASED SOLELY ON UNION MEMBERSHIP STATUS IS 'INHERENTLY CONDUCTIVE TO INCREASED UNION MEMBERSHIP.' IN HOLDING THAT A NATURAL CONSEQUENCE OF DISCRIMINATION, BASED SOLELY ON UNION MEMBERSHIP OR LACK THEREOF, IS DISCOURAGEMENT OR ENCOURAGEMENT OF MEMBERSHIP IN SUCH UNION, THE COURT MERELY RECOGNIZED A FACT OF COMMON EXPERIENCE-THAT THE DESIRE OF EMPLOYEES TO UNIONIZE IS DIRECTLY PROPORTIONAL TO THE ADVANTAGES THOUGHT TO BE OBTAINED FROM SUCH ACTION. NO MORE STRIKING EXAMPLE OF DISCRIMINATION SO FORESEEABLY CAUSING EMPLOYEE RESPONSE AS TO OBIVIATE THE NEED FOR ANY OTHER PROOF OF INTENT IS APPARENT THAN THE PAYMENT OF DIFFERENT WAGES TO UNION EMPLOYEES DOING A JOB THAN TO NON-UNION EMPLOYEES DOING THE SAME JOB."

DIRECTLY IN POINT IS MELVILLE CONFECTIONS V. NLRB, [48 LC ¶18,730] 327 F. 2d 689 (C.A. 7, 1964). THERE THE COMPANY

ESTABLISHED AN EMPLOYEE PROFIT SHARING PLAN IN 1958. THE PLAN WAS LIMITED TO "A REGULAR FULL TIME EMPLOYEE, NOT REPRESENTED BY A UNION DESIGNATED AS THE BARGAINING AGENT FOR THE EMPLOYEE." THE COURT SAID, AT PAGE 691:

...

"THE CONDUCT OF THE COMPANY IN CONTINUING TO MAINTAIN THE PROVISION MAKING UNION REPRESENTATIVE A DISQUALIFICATION FOR ELIGIBILITY TO PARTICIPATE IN ITS EMPLOYER PROFIT-SHARING PLAN BENEFITS AND CONTINUING TO BRING SUCH RESTRICTION TO THE ATTENTION OF ITS EMPLOYEES THROUGH DISTRIBUTION OF THE BOOKLET SETTING FORTH COMPANY POLICY CONSTITUTED A PER SE VIOLATION OF SECTION 8(A)(1). IT WAS EMPLOYER CONDUCT INHERENTLY DESTRUCTIVE OF RIGHTS GUARANTEED BY SECTION 7. BY ITS INHERENT NATURE IT INTERFERED WITH, RESTRAINED AND COERCED EMPLOYEES IN THE EXERCISE OF THEIR RIGHT TO BE REPRESENTED FOR COLLECTIVE BARGAINING BY A LABOR ORGANIZATION. IT PLACED A PENALTY ON SUCH ACTION-A DISQUALIFICATION TO PARTICIPATE IN PROFIT-SHARING BENEFITS. IT CARRIED WITH IT ITS OWN INHERENT EVIDENCE OF INTENT-IT STRAINS CREDULITY TO ASCRIBE SOME OTHER OR DIFFERENT INTENT TO THE PROVISION."

25. THAT SAME COURT WAS CONFRONTED WITH A SIMILAR ISSUE IN KROGER COMPANY & NATIONAL LABOR RELATIONS BOARD AND AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA AFL-CIO- ET AL, [58 LC ¶12,980] 401 F. 2d 682 (6TH CIR., 1968). IN THAT CASE THE EMPLOYER WITH A LONG HISTORY OF NEGOTIATING CONTRACTS WITH UNIONS EXCLUDED FROM PARTICIPATING IN A PENSION PLAN AND A PROFIT SHARING PLAN EMPLOYEES WHO RECEIVED COVERAGE IN A UNION NEGOTIATED PENSION PLAN. THE QUESTION AROSE WHETHER THIS CONDUCT CONSTITUTED A VIOLATION OF SECTION 8(A)(3) OF THE ACT. THE COURT SAID AT PAGE 22,630:

"IT IS CLEAR THAT PARAGRAPH 4 IS DISCRIMINATORY. IT IS OBVIOUS THAT "LIMITED GROUP PENSION PLAN" MEANS A UNION PENSION PLAN. WHILE "UNION" IS NOT MENTIONED, NEITHER IS ANY OTHER GROUP WHICH COULD POS-

SIBLY OFFER A PENSION PLAN TO KROGER EMPLOYEES. THE BENEFITS OF THE PROFITSHARING PLAN, WHICH ARE A FORM OF COMPENSATION, ARE SUBSTANTIAL. THEY CANNOT BE CONSIDERED OF SLIGHT BENEFIT TO THE EMPLOYEES AND THEY ARE DENIED TO THE EMPLOYEES WHO PARTICIPATE IN A UNION PENSION PLAN, WHEREAS THEY ARE NOT DENIED TO OTHER EMPLOYEES.

THE COMPANY CITES THE FACT THAT KROGER IS OVER 95% UNIONIZED AS PROOF THAT PARAGRAPH 4 DID NOT DISCOURAGE UNION MEMBERSHIP. THIS IS NOT A FAIR TEST. MANY OF THE UNION CONTRACTS HAD A PROVISION THAT EMPLOYEES HAD TO BE A MEMBER OF THE UNION IN ORDER TO HOLD THEIR JOBS. IT WAS, THEREFORE, NOT A QUESTION OF CHOOSING BETWEEN THE UNION AND THE PROFIT-SHARING PLAN OF THE COMPANY, RATHER IT WAS A CHOICE BETWEEN THE UNION AND A JOB. GIVEN A CHOICE, THE NECESSITY OF HAVING TO GIVE UP THE SUBSTANTIAL BENEFITS OF THE PROFIT-SHARING PLAN WOULD NATURALLY HAVE SOME DETERRING EFFECT ON UNION MEMBERSHIP. AS SAID BY THE TRIAL EXAMINER.

"(1) IT IS NOT THE QUANTUM OF RESTRAINING EFFECT UPON THE EMPLOYEES' DESIRE OR FREEDOM TO JOIN A UNION THAT DETERMINES THE LEGALITY OR PROPRIETY OF REPRESSIVE CONDUCT UNDER THIS STATUTE. IT IS ENOUGH THAT THE BEHAVIOUR COMPLAINED OF, OR THE RULES OF CONDUCT UNILATERALLY IMPOSED AND ENFORCED BY THE EMPLOYER, TEND IN THAT DIRECTION. THE ACT DOES NOT REQUIRE THAT 'THIS CHANGE IN EMPLOYEES' 'QUANTUM OF DESIRE' TO JOIN A UNION HAVE IMMEDIATE MANIFESTATIONS' (RADIO OFFICERS UNION V. NLRB, [25 LC ¶68,111] 347 U.S. 17,51)."

WHILE THERE MAY BE NO SPECIFIC INTENT SHOWN TO DISCRIMINATE AGAINST UNION MEMBERS AND TO DISCHARGE UNION MEMBERSHIP, EMPLOYER ACTION WHICH IN ITSELF HAS THIS EFFECT IS UNLAWFUL. THE COURT SAID IN RADIO OFFICERS V. LABOR BOARD, SUPRA, AT P. 45:

"THIS RECOGNITION THAT SPECIFIC PROOF OF INTENT IS UNNECESSARY WHERE EMPLOYER CON-

DUCT INHERENTLY ENCOURAGES OR DISCOURAGES UNION MEMBERSHIP IS BUT AN APPLICATION OF THE COMMON-LAW RULE THAT A MAN IS HELD TO INTEND THE FORESEEABLE CONSEQUENCE OF HIS CONDUCT."

SEE ALSO, LABOR BOARD V. ERIE RESISTOR CORP., [47 LC ¶18,249] 373 U.S. 221, 227; TEAMSTERS LOCAL V. LABOR BOARD, [42 LC ¶16,888] 365 U.S. 667, 675; REPUBLIC AVIATION CORP. V. LABOR BOARD, [9 LC ¶51,199] 324 U.S. 793, REHEARING DEN. 325 U.S. 894.

AS WE SHALL HEREINAFTER POINT OUT, KROGER MAINTAINED ITS POSITION AS STATED IN PARAGRAPH 4 AND REFUSED TO PERMIT ITS NEGOTIATORS TO DISCUSS ITS SAVINGS AND PROFIT-SHARING PLAN. THE COMPANY MUST THEREFORE BE HELD TO HAVE INTENDED WHATEVER EFFECT PARAGRAPH 4 HAD WITH RESPECT TO UNION ORGANIZATION AND MEMBERSHIP."

THERE ARE CERTAIN SIMILARITIES BETWEEN KROGER AND THE INSTANT CASE IN THAT, WHILE THE COMPANY WAS PREPARED TO DISCUSS A PENSION PLAN IT WOULD NOT PROVIDE DETAILS OR DISCUSS THE NORTH AMERICAN LIFE ASSURANCE PLAN WITH THE UNION.

26. IN GOODYEAR TIRE AND RUBBER COMPANY V. NATIONAL LABOR RELATIONS BOARD, [60 LC ¶10,239] (6TH CIR., 1969), THE EMPLOYER STATED IN ITS GROUP INSURANCE PLANS THAT EMPLOYEES WERE NOT ELIGIBLE TO PARTICIPATE IN THE PLAN IF THEY WERE REPRESENTED BY A COLLECTIVE BARGAINING AGENT. THE TRIAL EXAMINER CONCLUDED THAT THE CHALLENGED LANGUAGE AMOUNTED TO A PER SE VIOLATION OF THE ACT. HE REJECTED EVIDENCE TO SHOW THAT WHEN AN EMPLOYEE SELECTED A BARGAINING AGENT HE WAS TRANSFERRED FROM THE GOODYEAR PLAN TO ONE NEGOTIATED BY THEIR REPRESENTATIVE WITHOUT ANY LOSS IN COVERAGE. IN ADDITION, IT WAS ESTABLISHED THAT THE LANGUAGE IN QUESTION WAS INSERTED IN THE PLANS AT THE UNION'S REQUEST AND FURTHER THERE WAS NO EVIDENCE THAT GOODYEAR REFUSED TO BARGAIN ABOUT INCLUDING EMPLOYEES IN THE COMPANY'S PLANS. THE NATIONAL LABOR RELATIONS BOARD REJECTED WITHOUT REASONS THE TRIAL EXAMINER'S FINDING THAT THERE WAS A VIOLATION OF SECTION 8(A)(3), WHICH IS A DISCRIMINATORY SECTION, BUT FOUND A VIOLATION OF ANOTHER SECTION WITH WHICH WE ARE NOT HERE CONCERNED. HOWEVER, THE COURT TOOK THE OPPORTUNITY TO FURTHER EXPLAIN THE DECISIONS IN DURA CORP. AND KROGER CO. AS FOLLOWS AT PAGE 16,801:

...THE TRIAL EXAMINER, HOWEVER, REJECTED THIS EVIDENCE, AS WELL AS OTHER EVIDENCE OFFERED BY GOODYEAR TO SHOW THAT THE LANGUAGE DID NOT HAVE THE PROSCRIBED EFFECT, AND CONCLUDED THAT

THE CHALLENGED LANGUAGE AMOUNTED TO A PER SE VIOLATION OF SECTION 8(A)(3) OF THE ACT. RELYING ON TWO DECISIONS OF THIS CIRCUIT, DURA CORP. V. NLRB, [56 LC ¶12,111] 380 F. 2d 970 (1967), AND KROGER CO. V. NLRB, [58 LC ¶12,980] 401 F. 2d 682 (1968), AND THE SEVENTH CIRCUIT'S DECISION IN MELVILLE CONFECTIONS V. NLRB, 327 F. 2d 689 [49 LC ¶18,730] (1964), CERT. DENIED 377 U.S. 933, THE TRIAL EXAMINER HELD THAT THE LANGUAGE IN QUESTION WAS SO INHERENTLY DISCRIMINATORY THAT BUSINESS PURPOSE WAS IRRELEVANT. WITHOUT ARTICULATING ANY REASONS FOR ITS ACTION, THE BOARD REJECTED THE TRIAL EXAMINER'S CONCLUSION AND FOUND THAT THE LANGUAGE VIOLATED SECTION 8(A)(1). WHILE WE DO NOT AGREE WITH THE BOARD'S FINDING THAT THE LANGUAGE VIOLATED SECTION 8(A)(1), IT PROPERLY REJECTED THE FINDINGS MADE BY THE TRIAL EXAMINER. IN THE ABOVE CASES RELIED UPON BY THE TRIAL EXAMINER, THERE WAS EVIDENCE THAT THE DISCRIMINATORY LANGUAGE WAS ENFORCED THROUGH AN ACTUAL LOSS OF BENEFITS BY EMPLOYEES WHO SELECTED BARGAINING REPRESENTATIVES AND THEREBY LOST COVERAGE UNDER THE COMPANY PLANS. GIVEN THESE CIRCUMSTANCES IT CAN BE SAID THAT THE LANGUAGE IS QUESTION WAS BUT A PART OF A COMPANY DESIGN TO DISCOURAGE MEMBERSHIP IN LABOR ORGANIZATIONS. CONSEQUENTLY, THE BOARD ACTED WITHIN ITS AUTHORITY BY DIRECTING THE COMPANIES TO STRIKE THE LANGUAGE FROM THEIR PLANS. THE ABOVE CITED CASES DEMONSTRATE THAT THE SECTION 8(A)(3) VIOLATIONS RESULTED FROM THE USE OF THE QUESTIONABLE LANGUAGE, AND NOT FROM THE LANGUAGE PER SE.

SEE ALSO MOTOR WHEEL CORPORATION SUBSIDIARY OF GOODYEAR TIRE AND RUBBER COMPANY V. NATIONAL LABOR RELATIONS BOARD [62 LC ¶10,824] (6TH CIR., 1970). WE NOTE THAT THE INSTANT CASE IS SIMILAR TO BOTH THE DURA CORP. AND KROGER CO. CASES IN THAT THE EMPLOYEES CONCERNED SUFFERED AN ACTUAL LOSS OF BENEFITS AND LOST COVERAGE UNDER THE COMPANY'S PLANS.

27. WE HAVE ALSO NOTED BENDIX-WESTINGHOUSE AUTOMOTIVE AIR BRAKE COMPANY V. NATIONAL LABOR RELATIONS BOARD [65 LC 911,762] (1971) (6TH CIR.), WHICH FOUND THAT A PROFIT SHARING PLAN RESTRICTING ELIGIBILITY TO NON-UNION MEMBERS AND INTRODUCED DURING A UNION ORGANIZATIONAL CAMPAIGN CONSTITUTED NOT A PER SE UNLAWFUL INTERFERENCE UNDER SECTION 8(A)(1) BUT PER QUOD. WHILE THE DECISIONS IN DURA CORP., KROGER CO. AND GOODYEAR ARE DISCUSSED THERE IS NO DISCUSSION OF THE DISCRIMINATORY ASPECTS OF SUCH A PLAN.

28. A SIMILAR ISSUE HAS BEEN PREVIOUSLY DEALT WITH BY THIS BOARD IN INTERNATIONAL UNION, AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) V. FORD MOTOR COMPANY OF CANADA, LIMITED, 1966 JUNE OLRB MTHLY. REP. 195. THAT WAS A COMPLAINT UNDER SECTION 79 (FORMERLY SECTION 65 OF THE LABOUR RELATIONS ACT ALLEGING A VIOLATION OF SECTIONS 56 AND 58 (FORMERLY SECTIONS 48 AND 50). THE COMPANY HAD AMENDED ITS RETIREMENT PENSION PLAN IN WHICH THE AGGRIEVED PERSONS HAD PARTICIPATED SO AS TO PROVIDE THAT THE PLAN SHOULD NOT APPLY TO PERSONS WHOSE TERMS AND CONDITIONS OF EMPLOYMENT WERE COVERED BY A COLLECTIVE AGREEMENT. THE COMPLAINANT CONTENDED THAT THIS IMPOSED A TERM OR CONDITION OF EMPLOYMENT WHICH INHERENTLY DISCOURAGES THE CONCLUSION OF A COLLECTIVE AGREEMENT AND WHICH VIOLATES SECTION 56 AND 58. THE FACTS INDICATED THAT THE COMPANY MAINTAINED 6 PENSION PLANS COVERING 14,640 EMPLOYEES. PLAN NO. 3 COVERED ALL EMPLOYEES EXCLUDED FROM BARGAINING UNITS AND THE REMAINING 5 PLANS COVERED EMPLOYEES WHO WERE IN VARIOUS BARGAINING UNITS REPRESENTED BY DIFFERENT UNIONS. THE COMPLAINANT UNION HAD PRIOR TO THE INSERTION OF THE PROVISION INTO THE PENSION PLAN CONCERNING UNION MEMBERSHIP BARGAINED FOR A COLLECTIVE AGREEMENT AND THE UNION THEN MADE CERTAIN PROPOSALS ABOUT THE RIGHT TO CONTRIBUTE IN A CONTRIBUTORY PENSION PLAN AND ITS APPEARS THAT THE PARTIES CONCLUDED A MEMORANDUM OF SETTLEMENT WHICH INCLUDED AN AGREEMENT CONCERNING A RETIREMENT PENSION PLAN.

29. IT WAS SUBSEQUENT TO THIS SETTLEMENT THAT THE COMPANY AMENDED ITS PENSION PLAN. THE BOARD FOUND THAT BASED ON THE FACTS THAT THE AGGRIEVED PERSONS HAD NOT BEEN DEALT WITH CONTRARY TO SECTIONS 56 AND 58.

30. IN ARRIVING AT ITS DECISION, HOWEVER, THE MAJORITY MADE A NUMBER OF OBSERVATIONS WHICH ARE PERTINENT TO THIS CASE. IN PARAGRAPH 2 AT PAGE 195 THE MAJORITY STATED:

... "WHILE THE ISSUE, THEREFORE, IS NOT BEFORE US FOR DECISION, THE BOARD NOTES THAT THE PROVISION BY THE EMPLOYER THAT REPRESENTATION OF EMPLOYEES BY A TRADE UNION, WITHOUT MORE, DEPRIVES THEM OF THEIR RIGHT OF PARTICIPATION IN A PENSION

PLAN MAY VERY WELL CONSTITUTE AN OFFENCE UNDER SECTION 50 OF THE LABOUR RELATIONS ACT, AND WHERE, AS IN THE INSTANT CASE, ACTION TO THAT EFFECT IS TAKEN FOLLOWING NOTICE OF BARGAIN, IT WOULD APPEAR QUITE CLEARLY CONSTITUTE A VIOLATION OF SECTION 59 OF THE ACT, WHICH PROHIBITS IN SUCH CIRCUMSTANCES THE ALTERATION OF 'THE RATES OF WAGES OR ANY OTHER TERM OR CONDITION OF EMPLOYMENT OR ANY RIGHT, PRIVILEGE OR DUTY, OF THE EMPLOYER, THE TRADE UNION OR THE EMPLOYEES'."

ALSO, AT PAGE 198 THE MAJORITY STATED:

"COUNSEL FOR THE COMPLAINANT ARGUED THAT THE CONDUCT OF THE RESPONDENT CONSTITUTED AS WELL A VIOLATION OF SECTION 50(A), (B) AND (C) OF THE ACT. THE PROVISIONS OF THIS SECTION ARE DIRECTED AGAINST INTERFERENCE BY EMPLOYERS WITH THE RIGHTS OF EMPLOYEES ESTABLISHED UNDER THE ACT. CLEARLY, THE RIGHT TO PARTICIPATE IN PLAN NUMBER 3 HAD BEEN FOR THE AGGRIEVED PERSONS A TERM OR CONDITION OF EMPLOYMENT AND THE EMPLOYER'S ALTERATION OF THIS TERM OR CONDITION IN CIRCUMSTANCES RELATING TO UNION ACTIVITY MIGHT WELL CONSTITUTE A VIOLATION OF THE PROVISIONS OF THIS SECTION. THUS, AS SUGGESTED IN PARAGRAPH 2 ABOVE, THE PROVISION THAT PARTICIPATION IN THE PLAN WOULD NOT BE OPEN TO PERSONS WHO WERE REPRESENTED BY A BARGAINING AGENT WOULD SEEM TO US CLEARLY TO INVOLVE A VIOLATION OF SECTION 50, SINCE THE KNOWLEDGE THAT THIS PRIVILEGE WOULD BE LOST MIGHT WEIGH IN AN EMPLOYEES MIND AGAINST THE DESIRABILITY OF TRADE UNION REPRESENTATION. AS THE PROVISIONS OF PLAN NUMBER 3 STAND NOW, HOWEVER, IT IS NOT UNION ORGANIZATION WHICH WOULD LEAD TO THE LOSS OF THE RIGHT TO PARTICIPATE IN PLAN NUMBER 3, BUT RATHER THE COMPLETION OF A COLLECTIVE AGREEMENT. WHILE THERE MAY BE CIRCUMSTANCES IN WHICH, AS COUNSEL FOR THE COMPLAINANT ARGUES, THE KNOWLEDGE THAT THE RIGHT TO PARTICIPATE IN A PARTICULAR PLAN WOULD BE LOST IN THE EVENT OF COMPLETION OF A COLLECTIVE AGREEMENT WOULD INHIBIT THE COMPLE-

TION OF SUCH AN AGREEMENT, IT IS OUR OPINION THAT WHETHER SUCH INHIBITION IS CREATED IS A QUESTION OF FACT, TO BE DETERMINED WITH REGARD TO THE CIRCUMSTANCES OF EACH CASE. IN THIS RESPECT THE SITUATION IS TO BE DISTINGUISHED FROM THAT REFERRED TO IN PARAGRAPH 2 ABOVE. THE ANNOUNCEMENT BY AN EMPLOYER, THAT, ON EMPLOYEES BEING REPRESENTED BY A BARGAINING AGENT, THEY WOULD LOSE THE RIGHT OF PARTICIPATION, MUST BE DEEMED TO HAVE THE EFFECT OF INHIBITING THEM IN THE EXERCISE OF THEIR RIGHT TO TRADE UNION REPRESENTATION. IN A SITUATION SUCH AS THAT WHICH HAS ARISEN IN THE INSTANT CASE, HOWEVER, WHETHER OR NOT THERE IS ANY SUCH EFFECT IS CONTINGENT UPON THE CIRCUMSTANCES.

IT IS NOT SUGGESTED THAT THE RESPONDENT HAS DELIBERATELY ACTED IN ORDER TO INHIBIT TRADE UNION ORGANIZATION AMONG ITS EMPLOYEES OR IN ORDER TO INHIBIT THE COMPLETION OF A COLLECTIVE AGREEMENT OR FROM ANY ANTI-UNION BIAS. THE COMPLAINANT ARGUES RATHER THAT THE EFFECT OF THE RESPONDENT'S ACTION IS ALONE TO BE CONSIDERED AND THAT THE RESPONDENT MUST BE TAKEN TO HAVE INTENDED THE REASONABLE CONSEQUENCES OF ITS ACTS. WHILE WE HAVE INDICATED OUR VIEW THAT WHAT HAS BEEN DONE IN THE INSTANT CASE WAS NOT NECESSARILY IN VIOLATION OF SECTION 50 AND WHILE WE FIND THAT THE RESPONDENT DID NOT INTEND TO RESTRAIN ANY PERSON IN THE EXERCISE OF ANY RIGHTS UNDER THE ACT, IT REMAINS TO BE DETERMINED WHETHER OR NOT SUCH WAS, IN THE CIRCUMSTANCES, A REASONABLE CONSEQUENCE OF THE RESPONDENT'S ACTION AND WHETHER THE RESPONDENT SHOULD BE DEEMED RESPONSIBLE THEREFOR. THIS DETERMINATION, OF COURSE, IS TO BE MADE, NOT BY EXAMINING THE STATES OF MIND OF INDIVIDUAL EMPLOYEES, BUT RATHER BY CONSIDERING THE IMPLICATIONS OF THE RESPONDENT'S CONDUCT IN ITS ACTUAL CONTEXT. THEREFORE, THE HISTORY OF THE RELATIONSHIP BETWEEN THE PARTIES AND THE COLLECTIVE BARGAINING NEGOTIATIONS WHICH HAVE BEEN CARRIED ON ARE RELEVANT AND PROPER TO BE CONSIDERED IN THE INSTANT CASE.

THE MAJORITY ALSO STATED AT PAGE 200:

"COUNSEL FOR THE COMPLAINANT REFERRED THE BOARD TO A NUMBER OF DECISIONS OF THE NATIONAL LABOUR RELATIONS BOARD IN THE UNITED STATES. THESE DECISIONS, HOWEVER, RELATED IN EACH CASE TO CIRCUMSTANCES IN WHICH AN EMPLOYER DEPRIVED EMPLOYEES OF CERTAIN PRIVILEGES WHICH WOULD OTHERWISE HAVE BEEN AVAILABLE TO THEM SOLELY BECAUSE THEY WERE MEMBERS OF A TRADE UNION OR HAD BECOME REPRESENTED BY A BARGAINING AGENT. THE VIEW WHICH WE TAKE OF SUCH CIRCUMSTANCES, SET OUT IN PARAGRAPH 2 ABOVE, IS IN ACCORD WITH THESE DECISIONS. THE CIRCUMSTANCES OF THE INSTANT CASE ARE, AS WE HAVE INDICATED, CLEARLY DISTINGUISHABLE."

THIS BOARD IN THE FORD MOTOR COMPANY OF CANADA, LIMITED CASE, SUPRA, DISMISSED THE APPLICATION AFTER CONSIDERING THE PARTICULAR FACTS OF THAT CASE. THE FORD MOTOR COMPANY OF CANADA, LIMITED CASE CLEARLY INDICATED "THE PROVISION THAT PARTICIPATION IN (A) PLAN WOULD NOT BE OPEN TO PERSONS WHO WERE REPRESENTED BY A BARGAINING AGENT WOULD ...CLEARLY...INVOLVE A VIOLATION OF SECTION 50". IF WE ARE TO APPLY THE PRINCIPLES IN THE FORD MOTOR COMPANY OF CANADA, LIMITED CASE TO THE FACTS OF THIS CASE THERE IS NO DOUBT THAT THE ACTIONS OF THE COMPANY CONSTITUTE A VIOLATION OF THE ACT.

31. A GENERAL REVIEW OF THE CASES DEALING WITH DISCRIMINATION, AS WE NOTED, SUGGESTS THAT SOME DISTINCTION SHOULD BE DRAWN BETWEEN DETERMINING WHETHER THERE HAS BEEN A VIOLATION AND WHETHER A REMEDY SHOULD BE GRANTED. IT IS CLEAR THAT WHERE PERSONS ARE MEMBERS OF A TRADE UNION IN A BARGAINING UNIT REPRESENTED BY A TRADE UNION THERE WILL BE DIFFERENCES OR DISTINCTION BETWEEN THEM AND OTHERS, BUT THE ACT IS CONCERNED NOT WITH THE DISTINCTIONS MADE BETWEEN EMPLOYEES BUT WITH UNWARRANTED OR UNFAVOURABLE DISTINCTIONS IN THE SENSE THAT THERE IS "DISCRIMINATION AGAINST". THEREFORE, A PROVISION IN A PENSION PLAN OR PROFIT SHARING PLAN THAT DEPRIVES A PERSON OF BENEFITS WILL PER SE CONSTITUTE A VIOLATION OF SECTION 58 OF THE LABOUR RELATIONS ACT. THE LOSS OF SUCH A BENEFIT WOULD WEIGH IN AN EMPLOYEE'S MIND IN ASSESSING THE DESIRABILITY OF TRADE UNION REPRESENTATION.

32. IF SECTION 58 REQUIRES AN INTENT BY THE EMPLOYER THEN THE ACT OF REMOVING EMPLOYEES FROM A PENSION PLAN OR PROFIT SHARING PLAN IN OUR VIEW CARRIES WITH IT "UNAVOIDABLE CONSEQUENCES WHICH THE EMPLOYER NOT ONLY FORESAW BUT WHICH HE MUST HAVE INTENDED" AND THUS BEARS ITS OWN INDICIA OF INTENT". THE EMPLOYER THEN HAS THE ONUS OF DISAPPROVING SUCH INTENT. INTERNATIONAL UNION OF ELECTRICAL RADIO

AND MACHINE WORKERS, LOCAL 538 v. WEBSTER & HORSEFALL (CANADA) LTD.
AND JOHN S. GRANT, 1969 SEPTEMBER OLRB MTHLY. REP. 780; NLRB v. GREAT
DANE TRAILERS INC. [55 LC ¶11,973 AT PAGE 19,198].

33. WHERE AN EMPLOYEE IN FACT LOSES COVERAGE UNDER SUCH A PLAN BECAUSE OF MEMBERSHIP IN A TRADE UNION HE IS PRIMA FACIE ENTITLED TO RELIEF UNDER SECTION 79 UNLESS THE EMPLOYER CAN DEMONSTRATE THAT SUCH AN EMPLOYEE IS NOT SO ENTITLED. THUS, AN EMPLOYER WITH A HISTORY OF COLLECTIVE BARGAINING RELATIONSHIPS MAY DEMONSTRATE THAT IT HAS PROVIDED SUBSTANTIAL BENEFITS TO EMPLOYEES DURING COLLECTIVE BARGAINING TO DISPLACE THE BENEFITS LOST UNDER A PENSION PLAN AND THAT SUCH DISPLACEMENT WAS DONE WITH THE KNOWLEDGE AND CONCURRENCE OF THE UNION THEREBY OFFSETTING ANY EFFECTS OF DISCRIMINATION. IN THE GOODYEAR CASE, SUPRA, THERE WAS EVIDENCE THAT THE UNION INSTEAD OF SEEKING TO CONTINUE COVERAGE OF ITS MEMBERS UNDER THE GOODYEAR PLANS CHOSE TO NEGOTIATE ITS OWN PLANS AND GOODYEAR ATTEMPTED TO SHOW, ALTHOUGH THIS WAS REJECTED BY THE TRIAL EXAMINER, THAT NONE OF ITS EMPLOYEES LOST BENEFITS AS A RESULT OF JOINING A LABOUR UNION AND THAT WHERE AN EMPLOYEE SELECTED A BARGAINING AGENT HE WAS TRANSFERRED FROM THE GOODYEAR PLAN TO ONE NEGOTIATED BY THAT REPRESENTATIVE WITHOUT ANY LOSS IN COVERAGE.

34. BOTH THE INTERMOUNTAIN EQUIPMENT COMPANY CASE, SUPRA, AND THE GOODYEAR CASE MAY BE SUPPORTED ON THE BASIS THAT THE ACTIONS OF THE COMPANY WHEN VIEWED AS A WHOLE INDICATED THE EMPLOYEES WERE NOT IN FACT DISCRIMINATED AGAINST. IN INTERMOUNTAIN EQUIPMENT COMPANY THE EMPLOYEES RECEIVED "SUBSTANTIAL BENEFITS" WHICH OTHER NON-UNION MEMBERS DID NOT RECEIVE, NEGATING ANY DISCRIMINATION. IN GOODYEAR, NOT ONLY WAS THE LANGUAGE INSERTED AT THE UNION'S REQUEST BUT EMPLOYEES WERE TRANSFERRED TO SUBSTITUTE PLANS WITHOUT ANY LOSS IN COVERAGE. CONFIRMING THAT VIEW IS THE EXPRESSION OF OPINION IN GOODYEAR THAT THE VIOLATIONS RESULTED FROM THE USE OF THE QUESTIONABLE LANGUAGE AND NOT FROM THE LANGUAGE PER SE. IN OUR VIEW THOSE CASES MUST ALSO BE CONSIDERED ON THE BASIS THAT NO REMEDY WAS GRANTED BECAUSE THE EFFECTS OF DISCRIMINATION WERE OFFSET BY PROVIDING THE EMPLOYEES WITH ALTERNATE ARRANGEMENTS EITHER THROUGH OTHER SUBSTANTIAL BENEFITS OR AN ALTERNATE PENSION PLAN.

35. THE MORE DIFFICULT ARGUMENT IS THE ONE RAISED AND ABLY ARGUED BY COUNSEL FOR THE RESPONDENT WITH RESPECT TO THE EFFECT OF A COLLECTIVE AGREEMENT AND THAT THERE ARE NO TERMS OR CONDITIONS BEYOND THOSE IN THE COLLECTIVE AGREEMENT. IN SUPPORT OF ITS POSITION THE RESPONDENT RELIES ON THE NASH-FINCH COMPANY CASE, SUPRA. AS WE INDICATED THE CLEAR INFERENCE FROM THE COURSE OF CONDUCT BETWEEN THE PARTIES INDICATED THAT THE INSURANCE PLAN WAS CONCEDED DURING BARGAINING AND THAT IT DID NOT FIND ITS WAY INTO THE PLAN AND ACCORDINGLY WAS NOT A TERM OR CONDITION OF EMPLOYMENT. THE

NASH-FINCH COMPANY CASE MAY USEFULLY BE COMPARED WITH THE KROGER CASE WHERE THERE WAS A REFUSAL BY THE COMPANY TO PERMIT ITS NEGOTIATORS TO DISCUSS ITS SAVING AND PROFIT SHARING PLAN. THE COURT IN KROGER FELT IN THOSE CIRCUMSTANCES THAT THE COMPANY INTENDED TO DISCRIMINATE.

36. WHILE COLLECTIVE AGREEMENTS GENERALLY PRECLUDE PRIVATE CONTRACTUAL ARRANGEMENTS BETWEEN EMPLOYERS AND INDIVIDUAL EMPLOYEES SYNDICAT CATHOLIQUE DES EMPLOYES DE MAGASINS DE QUEBEC, INC. V. COMPAGNIE PAQUET LTEE (1959) 18 D.L.R. 2d 346 (S.C.C.) AT 353; J. I. CASE V. N.L.R.B. 1944 321 U.S. 332 (S.C.US) AND WHILE ONE MUST PROCEED WITH CAUTION IN IMPLYING RESIDUAL TERMS OR CONDITIONS OF EMPLOYMENT WHERE THERE IS A COLLECTIVE AGREEMENT, WE THINK THAT A DISTINCTION MUST BE MADE BETWEEN THOSE SITUATIONS INVOLVING ARRANGEMENTS OUTSIDE THE COLLECTIVE AGREEMENT BETWEEN INDIVIDUAL EMPLOYEES AND EMPLOYER AND INSTANCES WHERE THERE ARE EXPRESS TERMS OR CONDITIONS OF EMPLOYMENT OF A BLANKET NATURE SUPPLEMENTING THE RELATIONSHIP BETWEEN EMPLOYER AND EMPLOYEES. THAT MIGHT TAKE THE FORM OF STATUTORY CONDITIONS OR AS IN THIS CASE AN EXPRESS PLAN COVERING ALL EMPLOYEES ALBEIT UNILATERALLY IMPOSED.

37. AFTER CONSIDERING THE ARGUMENTS RAISED AND THE FACTS OF THIS CASE WE ARE SATISFIED THAT THE REMOVAL OF THE AGGRIEVED PERSONS FROM THE PENSION PLAN CONSTITUTED DISCRIMINATION AGAINST THE AGGRIEVED EMPLOYEES WITHIN THE MEANING OF SECTION 58 OF THE LABOUR RELATIONS ACT. IT IS CLEAR THAT NON-UNION EMPLOYEES ARE RECEIVING BENEFITS UNDER A PENSION PLAN AND THAT THE AGGRIEVED EMPLOYEES WHO HAVE BEEN REMOVED FROM THE PLAN HAVE SUFFERED A LOSS TO THEIR DETRIMENT. THEY HAVE BEEN DISCRIMINATED AGAINST WITHIN THE MEANING OF THE ACT AND THE CONDUCT OF THE EMPLOYER IN REMOVING THEM FROM THE PENSION PLAN WAS ALSO CONTRARY TO THE PURPOSES OF THE ACT.

38. THE REAL ISSUE IN THIS CASE IS DETERMINING THE PRECISE NATURE OF THE REMEDY TO BE GRANTED. HAD THIS APPLICATION BEEN MADE IN DECEMBER WHEN THE EMPLOYEES WERE REMOVED FROM THE PLAN WE WOULD HAVE ORDERED THEIR REINSTATEMENT TO THE PLAN. HOWEVER, THE SUBSEQUENT EVENTS, PARTICULARLY DURING NEGOTIATIONS ARE RELEVANT. THE COMPANY DID NOT ACT WITH OVERT HOSTILITY TO THE UNION AND IN NEGOTIATIONS IT TENDERED WHAT MIGHT HAVE BEEN THE BASIS FOR A SUBSTITUTE PENSION PLAN WHICH COUPLED WITH OTHER BENEFITS MIGHT HAVE OFFSET THE DISCRIMINATORY EFFECTS OF THE REMOVAL OF THE EMPLOYEES FROM THE PENSION PLAN. IN A SENSE IT WAS THE UNION'S HASTE WHICH PRECLUDED A RESOLUTION OF THE MATTER DURING NEGOTIATIONS.

39. ON THE OTHER HAND, THE COMPANY MUST BE FAULTED FOR NOT MAKING THE NECESSARY INFORMATION ABOUT THE NORTH AMERICAN LIFE ASSURANCE PLAN AVAILABLE TO THE UNION DURING NEGOTIATIONS. WE ARE

NOT PREPARED, AT THIS TIME, TO FIND AS THE COMPANY CONTENDED, THAT THE BENEFITS GAINED DURING NEGOTIATIONS SUFFICIENTLY AND SATISFACTORY REPLACED THE LOSS TO EMPLOYEES AS A RESULT OF THEIR REMOVAL FROM THE PENSION PLAN.

40. AFTER CONSIDERING THE PREVIOUS SATISFACTORY BARGAINING HISTORY BETWEEN THE PARTIES, THE LACK OF OVERT HOSTILITY TO THE UNION BY THE COMPANY AND THAT IN A SENSE THIS WAS A TECHNICAL VIOLATION OF THE ACT, AND THE DIFFICULTY OF DETERMINING THE PRECISE REMEDY WHICH WE MIGHT GIVE TO EMPLOYEES BECAUSE THE ADDITIONAL BENEFITS THAT THEY RECEIVED DURING NEGOTIATIONS MAY HAVE BEEN EITHER PARTLY OR WHOLLY SUFFICIENT TO OFFSET THE DISCRIMINATORY ACTIVITY, WE ARE OF THE OPINION THAT THE QUESTION OF A REMEDY SHOULD BE REFERRED BACK TO THE PARTIES FOR DISCUSSION AND TO DETERMINE THE REMEDY, IF ANY, TO WHICH THE EMPLOYEES ARE ENTITLED. THE BOARD WILL REMAIN SEIZED OF THE MATTER SHOULD THE PARTIES BE UNABLE TO REACH AGREEMENT AND IN THE EVENT THAT NO AGREEMENT IS REACHED THIS MATTER MAY BE SPOKEN TO AT THE REQUEST OF EITHER PARTY.

865-71-U: NIKOLA HALAR (2ND SHOP STEWARD) (COMPLAINANT) v. GORD MCKELLER & SHEET-METAL WORKERS LOCAL #540 (RESPONDENTS) v. THOMAS MARK (INTERVENER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: NIKOLA HALAR FOR THE COMPLAINANT; R. J. BETTERIDGE AND V. HARRISON FOR THE RESPONDENTS; THOMAS MARK FOR THE INTERVENER.

DECISION OF THE BOARD: OCTOBER 18, 1971.

1. THIS IS A COMPLAINT UNDER SECTION 79 (FORMERLY SECTION 65) OF THE LABOUR RELATIONS ACT, IN WHICH IT IS ALLEGED THAT THE RESPONDENTS CONTRAVENED SECTION 60 (FORMERLY SECTION 51A) OF THE ACT IN THAT THEY FAILED TO CARRY OUT THE PROPER GRIEVANCE PROCEDURE WITH RESPECT TO GRIEVANCES FILED BY I. BOZZO AND FRANK COTUGNO, EMPLOYEES OF EASTLAND METALS LIMITED.

2. SECTION 60 READS AS FOLLOWS:

"A TRADE UNION OR COUNCIL OF TRADE UNIONS, SO LONG AS IT CONTINUES TO BE ENTITLED TO REPRESENT EMPLOYEES IN A BARGAINING UNIT, SHALL NOT ACT IN A MANNER THAT IS ARBITRARY, DIS-

CRIMINATORY OR IN BAD FAITH IN THE REPRESENTATION OF ANY OF THE EMPLOYEES IN THE UNIT, WHETHER OR NOT MEMBERS OF THE TRADE UNION OR OF ANY CONSTITUENT UNION OF THE COUNCIL OF TRADE UNIONS, AS THE CASE MAY BE."

3. THERE IS A COLLECTIVE AGREEMENT SUBSISTING BETWEEN EASTLAND METALS LIMITED, HEREINAFTER CALLED THE "COMPANY", THE EMPLOYER OF BOZZO AND OF CATUGNO AND SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION #540, HEREINAFTER CALLED THE "LOCAL", IN WHICH THE COMPANY RECOGNIZES THE LOCAL AS THE SOLE COLLECTIVE BARGAINING AGENT FOR ALL EMPLOYEES OF THE COMPANY WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT.

4. THERE IS NO DISPUTE THAT MR. CATUGNO FILED A WRITTEN GRIEVANCE ON FEBRUARY 19, 1971 ALLEGING THAT HE WAS LAID OFF WHILE ANOTHER PERSON OF LESS SENIORITY WAS RETAINED IN EMPLOYMENT. THE EVIDENCE IS THAT THIS GRIEVANCE WAS PROCESSED TO THE SECOND STAGE OF THE GRIEVANCE PROCEDURE OUTLINED IN THE AGREEMENT. THE COMPANY ENDORSED ITS DISPOSITION OF THE GRIEVANCE ON THE FORM AND RETURNED IT TO THE LOCAL. THE COMPANY, IN ITS REPLY, DENIED THAT IT HAD VIOLATED THE AGREEMENT. THE GRIEVANCE WAS NOT PROCESSED FURTHER BY THE LOCAL.

5. IT WAS THE CONTENTION OF THE APPLICANT THAT BOZZO WAS NOT SATISFIED WITH THE ANSWER GIVEN BY THE COMPANY AND THAT HE DESIRED TO CARRY THE COMPLAINT THROUGH TO ARBITRATION. MR. CATUGNO TESTIFIED TO THAT EFFECT. IT WAS THE COMPLAINANT'S CONTENTION THAT MCKELLAR, A STEWARD OF THE LOCAL, HAD INDICATED THAT IT COULD TAKE UP TO TEN MONTHS TO PUT THE MATTER INTO ARBITRATION FROM WHICH THE GRIEVOR CONCLUDED THAT ARBITRATION WAS ACTUALLY BEING SOUGHT ON HIS COMPLAINT

6. MR. BETTERIDGE, BUSINESS AGENT FOR LOCAL #540, STATED THAT HE ENTERED THE PICTURE AT THE SECOND STAGE OF THE GRIEVANCE PROCEDURE AND TOOK PART IN THE MEETING WITH THE COMPANY, OTHER UNION OFFICERS AND THE GRIEVOR, HELD AT THAT STAGE PURSUANT TO THE COLLECTIVE AGREEMENT. HE STATED THAT FOLLOWING THE MEETING AND THE RECEIPT OF THE WRITTEN DECISION OF THE COMPANY THAT THE LOCAL COMMITTEE WHO ATTENDED THE MEETING WERE OF THE OPINION THAT THE GRIEVANCE LACKED MERIT AND OUGHT NOT TO BE PROCESSED FURTHER. THE MATTER WAS PLACED BEFORE THE EXECUTIVE OF THE UNION WHICH CONCLUDED THAT THE GRIEVANCE WAS NOT VALID AND RECOMMENDED TO THE MEMBERS THAT IT NOT BE PROCESSED FURTHER. THE RECOMMENDATION WAS THEN TAKEN TO A MEMBERSHIP MEETING WHERE IT WAS ACCEPTED ON A VOTE OF THE MEMBERS PRESENT. MR. BETTERIDGE TESTIFIED THAT THIS WAS THE NORMAL PROCEDURE FOLLOWED WHEN A QUESTION AROSE AS TO WHETHER A GRIEVANCE MERITED AN APPEAL TO ARBITRATION.

7. Mr. Bozzo's GRIEVANCE IS DATED FEBRUARY 19, 1971 AND ALSO COMPLAINS THAT HE WAS LAID OFF WHILE A LESS SENIOR EMPLOYEE WAS RETAINED IN EMPLOYMENT. A MEETING WITH THE COMPANY WAS HELD WITH RESPECT TO THIS GRIEVANCE. IT WAS ATTENDED, ON BEHALF OF THE LOCAL, BY BETTERIDGE, THE BUSINESS AGENT OF THE UNION, T. MARK, SHOP STEWARD AND A. OSBORNE AND THE GRIEVOR OF THE GRIEVANCE COMMITTEE.

8. THE WRITTEN REPLY OF THE COMPANY ENCLOSED ON THE GRIEVANCE FOLLOWING THE MEETING DENIES VIOLATION OF THE COLLECTIVE AGREEMENT. IT CONTAINS A STATEMENT THAT THE THREE UNION OFFICIALS MENTIONED ABOVE AGREED WITH THE DISPOSITION MADE BY THE COMPANY. THIS GRIEVANCE WAS NOT CARRIED BEYOND THIS STAGE BY THE LOCAL.

9. Mr. THOMAS MARK TESTIFIED THAT THE REPLY OF THE COMPANY APPEARING ON THE GRIEVANCE DID NOT REFLECT THE TRUE RESULT OF THE MEETING. HE STATED THAT HE AND THE GRIEVOR DID NOT ACCEPT THE DISPOSITION MADE BY THE COMPANY AND WANTED THE MATTER PROCESSED TO ARBITRATION.

10. Mr. BETTERIDGE TESTIFIED THAT HE AND Mr. MARK AND Mr. HARRISON, PLANT SUPERVISOR, WERE IN AGREEMENT ON THE SETTLEMENT OF THE GRIEVANCE. Mr. HARRISON TESTIFIED TO THE SAME EFFECT. Mr. BETTERIDGE FURTHER TESTIFIED THAT THE DECISION WAS MADE NOT TO PROCEED WITH THIS GRIEVANCE. HE TESTIFIED THAT IT WAS PART OF HIS DUTIES AS BUSINESS AGENT TO REVIEW THE MERITS OF ALL GRIEVANCES. THE MATTER WAS TAKEN UP WITH THE EXECUTIVE COMMITTEE OF THE UNION AND WAS THEN REFERRED TO THE MEMBERSHIP TOGETHER WITH THE EXECUTIVE'S RECOMMENDATION THAT THE GRIEVANCE BE DROPPED. THE MEMBERSHIP VOTED TO ACCEPT THE RECOMMENDATION OF THE EXECUTIVE AND THE GRIEVANCE WAS, ACCORDINGLY, NOT PROCESSED ANY FURTHER.

11. WE MIGHT SAY AT THIS POINT THAT IN OUR OPINION THESE PROCEEDINGS MIGHT HAVE BEEN AVOIDED HAD THE LOCAL SEEN TO IT THAT THE GRIEVOR WERE KEPT FULLY INFORMED AS TO THE DECISIONS MADE WITH RESPECT TO THEIR GRIEVANCES AND THE REASONS THEREFOR.

12. ON THE BASIS OF ALL OF THE EVIDENCE AND THE SUBMISSIONS OF THE PARTIES, HOWEVER, WE FIND THAT THE LOCAL HAS NOT ACTED IN A MANNER THAT WAS ARBITRARY, DISCRIMINATORY OR IN BAD FAITH IN THE REPRESENTATION OF THE EMPLOYEES IPPOLITO BOZZO AND FRANK CATUGNO WITH RESPECT TO THE WRITTEN GRIEVANCES SUBMITTED BY THEM ON FEBRUARY 19, 1971.

13. THE APPLICATION IS ACCORDINGLY DISMISSED.

942-71-R: INTERNATIONAL MOLDERS' AND ALLIED WORKERS' UNION, LOCAL 246 (APPLICANT) v. EATON YALE LTD. (RESPONDENT) v. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA AND ITS LOCAL 535 (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFFEE.

APPEARANCES AT THE HEARING: T. WOHL, G. PLANCKE AND K. KRAFFT FOR THE APPLICANT, F. G. HAMILTON, L. T. COREY AND D. W. HYDEN FOR THE RESPONDENT, R. RUSSELL AND M. QUINN FOR THE INTERVENER.

DECISION OF THE BOARD: OCTOBER 14, 1971.

1. THE NAME "TIMBERJACK MACHINES LIMITED" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "EATON YALE LTD."

2. THIS IS AN APPLICATION MADE UNDER SECTION 55 (FORMERLY SECTION 47A) OF THE LABOUR RELATIONS ACT.

3. THE APPLICANT ALLEGES THAT ON OR ABOUT JANUARY 1, 1971 THERE WAS A SALE OF A BUSINESS BY EATON YALE & TOWNE INC. CANADIAN MATERIALS HANDLING DIVISION WHOSE PLANT IS LOCATED IN ST. CATHARINES TO TIMBERJACK MACHINES LIMITED WHICH COMPANY HAS PLANTS LOCATED IN WOODSTOCK, NORTH BAY, THUNDER BAY AND KAPUSKASING. THE APPLICANT SUBMITS THAT AS OF THE DATE OF THE SALE IT HELD BARGAINING RIGHTS FOR A UNIT OF EMPLOYEES OF TIMBERJACK MACHINES LIMITED AND THAT THE INTERVENER HELD BARGAINING RIGHTS FOR A UNIT OF EMPLOYEES OF EATON YALE & TOWNE INC. CANADIAN MATERIALS HANDLING DIVISION.

4. THE APPLICANT SUBMITS THAT THE ABOVE SALE FALLS WITHIN THE PURVIEW OF SECTION 55(1). THE APPLICANT FURTHER ALLEGES THAT THERE HAS BEEN AN INTERMINGLING OF THE EMPLOYEES OF TIMBERJACK MACHINES LIMITED AT ITS WOODSTOCK PLANT WITH THOSE OF EATON YALE & TOWNE INC. CANADIAN MATERIALS HANDLING DIVISION AT ITS ST. CATHARINES PLANT WITHIN THE MEANING OF SECTION 55(6) OF THE ACT. THE APPLICANT IS REQUESTING THAT THE BOARD MAKE THE FOLLOWING DECLARATIONS: (1) THAT THE INTERVENER NO LONGER REPRESENTS THE FORMER EMPLOYEES OF EATON YALE & TOWNE INC. CANADIAN MATERIALS HANDLING DIVISION, (2) THAT THE EMPLOYEES CONCERNED CONSTITUTE AN APPROPRIATE BARGAINING UNIT AND THAT THE APPROPRIATE UNIT IS THAT DESCRIBED IN THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND TIMBERJACK MACHINES LIMITED, AND (3) THAT THE APPLICANT IS THE BARGAINING AGENT FOR THE EMPLOYEES OF BOTH BUSINESSES IN THE SAID UNIT.

5. THE EVIDENCE ADDUCED AT THE HEARING IS AS FOLLOWS. TIMBER-

JACK MACHINES LIMITED WHICH HAS A FEDERAL CHARTER WAS MERGED WITH TWO OTHER COMPANIES, ALSO HAVING FEDERAL CHARTERS, TO FORM E.Y.T. OF CANADA LIMITED. AT ABOUT THE SAME TIME SIX COMPANIES WITH ONTARIO CHARTERS WERE MERGED TO FORM EATON YALE & TOWNE OF CANADA LIMITED. WITHIN A MATTER OF A FEW DAYS AFTER THE INCORPORATION OF E.Y.T. OF CANADA LIMITED, THAT COMPANY WAS PURCHASED BY EATON YALE & TOWNE CANADA LIMITED. SUBSEQUENTLY, A COMPANY BY THE NAME OF EATON YALE LTD. PURCHASED EATON YALE & TOWNE OF CANADA LIMITED AND EATON YALE TOWNE INC. CANADIAN MATERIALS HANDLING DIVISION AND ALSO SOME EIGHT OTHER BUSINESSES IN ONTARIO. THE OPERATIONS OF TIMBERJACK MACHINES LIMITED AT WOODSTOCK BECAME KNOWN AS EATON YALE LTD., FORESTRY EQUIPMENT DIVISION, WOODSTOCK PLANT, AND THE OPERATIONS OF EATON YALE & TOWNE INC. CANADIAN MATERIALS HANDLING DIVISION BECAME KNOWN AS EATON YALE LTD., FORESTRY EQUIPMENT DIVISION, ST. CATHARINES PLANT.

6. THE APPLICANT HAD A COLLECTIVE AGREEMENT WITH TIMBERJACK MACHINES LIMITED EFFECTIVE FROM JUNE 2, 1969 TO OCTOBER 2, 1971. BY THE SCOPE CLAUSE OF THE AGREEMENT THE COMPANY RECOGNIZED THE UNION AS THE BARGAINING AGENT FOR ALL OF ITS EMPLOYEES SAVE AND EXCEPT CERTAIN SPECIFIED CLASSIFICATIONS. THE INTERVENER HAD A COLLECTIVE AGREEMENT WITH EATON YALE & TOWNE INC. CANADIAN MATERIALS HANDLING DIVISION WHICH EXPIRED ON SEPTEMBER 15, 1971. BY THE SCOPE CLAUSE THE COMPANY RECOGNIZED THE INTERVENER AS BARGAINING AGENT FOR ALL HOURLY RATED EMPLOYEES IN ITS PLANT WITH CERTAIN SPECIFIED EXCEPTIONS. ON SEPTEMBER 15, 1971 THE INTERVENER AND EATON YALE LTD., FORESTRY EQUIPMENT DIVISION SIGNED A MEMORANDUM OF SETTLEMENT FOR A COLLECTIVE AGREEMENT COVERING THE SAME UNIT OF EMPLOYEES. THE COLLECTIVE AGREEMENT WHEN EXECUTED IS TO BE EFFECTIVE FROM SEPTEMBER 15, 1971 TO SEPTEMBER 15, 1974.

7. THE BUSINESS CARRIED ON AT THE WOODSTOCK PLANT OF TIMBERJACK MACHINES LIMITED BOTH BEFORE AND AFTER IT WAS SOLD AND BECAME A PART OF EATON YALE LTD., FORESTRY EQUIPMENT DIVISION HAS BEEN THE MANUFACTURE OF TIMBERJACK MACHINES FOR LOGGING OPERATIONS. THE BUSINESS CARRIED ON AT THE ST. CATHARINES PLANT OF EATON YALE & TOWNE INC. CANADIAN MATERIALS HANDLING DIVISION BOTH BEFORE AND AFTER IT WAS SOLD AND BECAME A PART OF EATON YALE LTD., FORESTRY EQUIPMENT DIVISION HAS BEEN THE MANUFACTURE OF FORK LIFT TRUCKS AND HOISTS FOR USE IN INDUSTRIAL OPERATIONS. FOR A SHORT PERIOD OF TIME AFTER THE ABOVE SALES, DUE TO A LACK OF PRODUCTION SPACE CERTAIN OPERATIONS WERE TEMPORARILY TRANSFERRED FROM THE WOODSTOCK PLANT TO THE ST. CATHARINES PLANT. WITH A SINGLE EXCEPTION ALL OF THOSE OPERATIONS WERE TRANSFERRED BACK TO THE WOODSTOCK PLANT WITHIN A MATTER OF A COUPLE OF MONTHS. AT NO TIME HAS THERE BEEN ANY INTERMINGLING OF THE EMPLOYEES OF THE WOODSTOCK AND ST. CATHARINES PLANTS.

8. COUNSEL FOR THE APPLICANT SUBMITS THAT THE TRANSFER OF WORK FROM THE WOODSTOCK PLANT TO THE ST. CATHARINES PLANT WAS TANTAMOUNT TO AN INTERMINGLING OF THE EMPLOYEES OF THE TWO PLANTS WITHIN THE MEANING OF SUBSECTION (6) OF SECTION 55. BASED ON THIS PREMISE COUNSEL FURTHER SUBMITS THAT SINCE THERE IS NO GEOGRAPHIC LIMITATION IN THE SCOPE OF THE BARGAINING UNIT FOR WHICH THE APPLICANT HELD BARGAINING RIGHTS FOR THE EMPLOYEES OF TIMBERJACK MACHINES LIMITED, THE BOARD SHOULD FIND THAT THE SAID UNIT IS THE ONE UNIT APPROPRIATE FOR COLLECTIVE BARGAINING AND DECLARE THE APPLICANT TO BE THE BARGAINING AGENT NOT ONLY FOR THE EMPLOYEES FORMERLY COVERED BY THAT UNIT BUT ALSO THE EMPLOYEES FALLING WITHIN THE DESCRIPTION OF THE UNIT AT THE ST. CATHARINES PLANT.

9. WE COMPLETELY REJECT THE SUBMISSION OF COUNSEL FOR THE APPLICANT THAT THE TRANSFER OF WORK FROM THE WOODSTOCK PLANT TO THE ST. CATHARINES PLANT AMOUNTS TO THE SAME THING AS INTERMINGLING OF THE EMPLOYEES OF THE TWO PLANTS. THE EVIDENCE IS QUITE CLEAR THAT THERE HAS BEEN NO INTERCHANGE OF EMPLOYEES. WE ACCORDINGLY FIND THAT SUBSECTION (6) OF SECTION 55 IS NOT APPLICABLE IN THE INSTANT CASE. THIS BEING SO, WE FIND THAT THE SUBMISSIONS OF COUNSEL WITH RESPECT TO THE APPROPRIATE BARGAINING UNIT AND THE BARGAINING RIGHTS HELD BY THE APPLICANT ARE NOT RELEVANT.

10. CLEARLY THERE HAS NOT BEEN A SALE OF A BUSINESS BY EATON YALE & TOWNE INC. CANADIAN MATERIALS HANDLING DIVISION TO TIMBERMACHINES LIMITED AS ALLEGED BY COUNSEL FOR THE APPLICANT. RATHER THERE WAS A SALE OF THE BUSINESS OF EATON YALE & TOWNE INC. TO EATON YALE LTD. IN THE CASE OF TIMBERJACK MACHINES LIMITED, ON THE EVIDENCE BEFORE US WE FIND THAT THE MERGER OF THAT COMPANY TO FORM E.Y.T. OF CANADA LIMITED FALLS WITHIN THE CONCLUDING PHRASE "ANY OTHER MANNER OF DISPOSITION" AS THESE WORDS ARE USED IN THE DEFINITION OF "SELLS" IN SECTION 55(1)(B) OF THE ACT. WE THEREFORE FIND THAT TIMBERJACK MACHINES LIMITED SOLD ITS BUSINESS TO E.Y.T. OF CANADA LIMITED. THE EVIDENCE IS THAT E.Y.T. OF CANADA LIMITED THEN SOLD ITS BUSINESS TO EATON YALE & TOWNE CANADA LIMITED WHICH IN TURN SOLD ITS BUSINESS TO EATON YALE LTD. WE FURTHER FIND THAT THE BARGAINING RIGHTS HELD BY THE APPLICANT FOR A UNIT OF EMPLOYEES OF TIMBERJACK MACHINES LIMITED CONTINUED THROUGH THE ABOVE SERIES OF SALES TO EMPLOYEES OF THE ULTIMATE PURCHASER EATON YALE LTD. (SEE TRENTON RIVERSIDE DAIRY PRODUCTS LIMITED CASE (1964) 2 C.L.S. 76-1005 AND GRENVILLE AGGREGATE SPECIALTIES LTD. CASE OLRB M.R. JULY 1965 P. 304).

11. SUBSECTION (3) OF SECTION 55 PROVIDES INTER ALIA THAT A TRADE UNION WHICH HOLDS BARGAINING RIGHTS FOR EMPLOYEES OF AN EMPLOYER WHO SELLS HIS BUSINESS CONTINUES TO BE THE BARGAINING AGENT FOR THE EMPLOYEES OF THE PERSON TO WHOM THE BUSINESS WAS SOLD IN THE LIKE BARGAINING UNIT IN THAT BUSINESS. COUNSEL FOR THE APPLI-

CANT SUBMITS THAT HAVING REGARD TO THE INTERMINGLING OF EMPLOYEES AND THE FACT THAT THE BARGAINING UNIT REPRESENTED BY THE APPLICANT UNDER ITS COLLECTIVE AGREEMENT WITH TIMBERJACK MACHINES LIMITED HAD NO GEOGRAPHIC LIMITATION, THE LIKE BARGAINING UNIT FOR WHICH THE APPLICANT CONTINUES TO BE THE BARGAINING AGENT ENCOMPASSES THE EMPLOYEES OF EATON YALE LTD. AT ITS ST. CATHARINES PLANT. THE BOARD HAS FOUND THAT THERE WAS NO INTERMINGLING OF EMPLOYEES AT THE WOODSTOCK AND ST. CATHARINES PLANTS. BASED ON THE EVIDENCE, THE BOARD FURTHER FINDS THAT THE SCOPE OF THE BARGAINING UNIT DESCRIBED IN THE APPLICANT'S COLLECTIVE AGREEMENT WITH TIMBERJACK MACHINES LIMITED WAS CONFINED TO THAT COMPANY'S WOODSTOCK AND NORTH BAY PLANTS AND DID NOT INCLUDE ITS THUNDER BAY AND KAPUSKASING PLANTS. IN THESE CIRCUMSTANCES, THE BOARD FINDS THAT THE LIKE BARGAINING UNIT FOR WHICH THE APPLICANT HOLDS BARGAINING RIGHTS AMONG THE EMPLOYEES OF EATON YALE LTD., FORESTRY EQUIPMENT DIVISION IS ALL OF THE COMPANY'S EMPLOYEES AT ITS WOODSTOCK AND NORTH BAY PLANTS SAVE AND EXCEPT THOSE PERSONS EXCLUDED IN THE APPLICANT'S COLLECTIVE AGREEMENT WITH TIMBERJACK MACHINES LIMITED. IN THE CASE OF THE INTERVENER, AS A RESULT OF THE SALE OF THE BUSINESS OF EATON YALE & TOWNE INC. CANADIAN MATERIALS HANDLING DIVISION TO EATON YALE LTD., WE FIND THAT THE INTERVENER CONTINUED TO BE THE BARGAINING AGENT FOR ALL OF THE EMPLOYEES OF EATON YALE LTD., FORESTRY EQUIPMENT DIVISION AT ST. CATHARINES SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN AND OFFICE STAFF. IN MAKING OUR DETERMINATION WITH RESPECT TO THE "LIKE BARGAINING UNITS" THE BOARD HAS TAKEN INTO ACCOUNT THE PRINCIPLES SET FORTH IN THE OSHAWA WHOLESALE LIMITED CASE OLRB M.R. FEBRUARY 1965 P. 584.

396-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 1669 (APPLICANT) V. ALCAN BUILDING PRODUCTS LIMITED (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS D. B. ARCHER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: L. A. MACLEAN AND WILLIAM SHERMAN FOR THE APPLICANT; THOMAS A. HEINTZMAN AND M. F. WILDING FOR THE RESPONDENT.

DECISION OF THE BOARD: OCTOBER 18, 1971.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.
2. IN THIS APPLICATION FOR CERTIFICATION THE APPLICANT IS

SEEKING BARGAINING RIGHTS ON BEHALF OF ALL CARPENTER ALUMINIUM APPLICATORS AND THEIR APPRENTICES IN THE DISTRICT OF KENORA, (PATRICIA PORTION INCLUDED).

3. IT WAS ALLEGED BY THE APPLICANT THAT THE PARTIES WERE IN DISAGREEMENT CONCERNING WHETHER THERE WAS A COLLECTIVE AGREEMENT BETWEEN THEM. IN THE EVENT THAT THE ALLEGED COLLECTIVE AGREEMENT BETWEEN THE PARTIES WAS NOT A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(E) OF THE LABOUR RELATIONS ACT, THEN, THE APPLICANT WAS ANXIOUS TO PROCEED WITH THIS APPLICATION FOR CERTIFICATION.

4. THE RESPONDENT ADOPTED THE POSITION THAT THE ALLEGED COLLECTIVE AGREEMENT WAS NOT A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(E) OF THE LABOUR RELATIONS ACT BECAUSE THE PERSON WHO EXECUTED THE ALLEGED COLLECTIVE AGREEMENT ON BEHALF OF THE RESPONDENT WAS NOT AUTHORIZED TO DO SO BY THE RESPONDENT. THE RESPONDENT FURTHER ALLEGED THAT THE APPLICATION FOR CERTIFICATION OUGHT TO BE DISMISSED BECAUSE ON THE DATE OF THE MAKING OF THIS APPLICATION FOR CERTIFICATION IT HAD NO CARPENTERS IN ITS EMPLOY IN THE DISTRICT OF KENORA. IN THE ALTERNATIVE, THE RESPONDENT ALLEGED THAT EVEN IF THERE WAS ONCE A COLLECTIVE AGREEMENT BETWEEN THE PARTIES THE APPLICANT HAD ABANDONED ITS BARGAINING RIGHTS. THE RESPONDENT ALSO ARGUED THAT THE BOARD HAD NO JURISDICTION TO DETERMINE WHETHER THE ALLEGED COLLECTIVE AGREEMENT WAS A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(E) OF THE LABOUR RELATIONS ACT.

5. THE BOARD HAS CONSIDERED THE REPRESENTATIONS OF THE PARTIES CONCERNING WHETHER THE BOARD HAS THE JURISDICTION TO ENTERTAIN THIS APPLICATION. IN OUR VIEW, SECTION 5 OF THE LABOUR RELATIONS ACT HAS APPLICATION TO THIS PROCEEDING BEFORE THE BOARD. IT IS NECESSARY FOR THE BOARD TO DETERMINE WHETHER THERE ARE EXISTING BARGAINING RIGHTS BETWEEN THE PARTIES IN ORDER TO DETERMINE WHETHER THE PRESENT APPLICATION IS TIMELY.

6. WILLIAM SHERMAN, A REPRESENTATIVE OF THE APPLICANT WAS CALLED TO GIVE EVIDENCE BY THE APPLICANT AND MALCOLM WILDING, THE ASSISTANT TO THE PRESIDENT OF THE RESPONDENT, WAS CALLED TO GIVE EVIDENCE BY THE RESPONDENT.

7. MR. SHERMAN TESTIFIED THAT IN FEBRUARY 1970 HE HEARD REPORTS THAT MEMBERS OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA WERE WORKING ON A HOTEL IN FORT FRANCES. HE TRIED TO MAKE AN APPOINTMENT TO SEE A REPRESENTATIVE OF THE RESPONDENT IN WINNIPEG ABOUT THE WORK IN FORT FRANCES. THE APPOINTMENT WAS ARRANGED FOR APRIL 17, 1970 AND WAS HELD IN THE OFFICE OF MR. J. S. SERGANO, THE MANAGER OF THE MID-WESTERN DIVISION OF THE RESPONDENT.

DURING DISCUSSIONS BETWEEN MR. SHERMAN AND MR. SERGANO, THE FORMER ASKED THE LATTER IF THE RESPONDENT HAD MEMBERS OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA IN ITS EMPLOY AT FORT FRANCES AND ALSO WHETHER THE LATTER HAD AUTHORITY TO SIGN A COLLECTIVE AGREEMENT WITH THE APPLICANT. MR. SERGANO ASSURED MR. SHERMAN THAT THE RESPONDENT HAD SUCH EMPLOYEES AND THAT HE HAD THE AUTHORITY TO EXECUTE A COLLECTIVE AGREEMENT WITH THE APPLICANT.

8. THE TWO MEN DISCUSSED THE APPLICANT'S CURRENT COLLECTIVE AGREEMENT WITH THE LAKEHEAD BUILDERS' EXCHANGE. MR. SERGANO'S SECRETARY THEN TYPED UP THE APPLICANT'S SHORT FORM AGREEMENT. THIS AGREEMENT BETWEEN THE RESPONDENT AND THE APPLICANT IS SIGNED BY "WILLIAM SHERMAN ON BEHALF OF THE APPLICANT AND BY "J. S. SERGANO" IN HIS CAPACITY AS "MANAGER MID-WESTERN DIVISION" ON BEHALF OF THE RESPONDENT. THE RESPONDENT'S SIGNATURE WAS WITNESSED BY A COMMISSIONER FOR OATHS. THIS AGREEMENT WAS BACK-DATED TO FEBRUARY 24, 1970 AND INCORPORATES THE TERMS OF A THEN EXISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE LAKEHEAD BUILDERS' EXCHANGE. THE LATTER AGREEMENT WAS EFFECTIVE WITHIN THE GEOGRAPHIC AREA DEFINED AS "THE DISTRICT OF RAINY RIVER, KENORA, THUNDER BAY AND THAT PART OF THE DISTRICT OF ALGOMA AND COCHRANE NORTH OF THE 49TH PARALLEL AND WEST OF THE NORTH DRIFTWOOD, ABITIBI AND MOOSE RIVERS TO THE JAMES BAY INCLUDING THE RIVERS HEREIN NAMED". THE AGREEMENT BETWEEN THE PARTIES WAS TO RUN FOR A MINIMUM OF ONE YEAR FROM APRIL 17, 1970, THE DATE THE AGREEMENT WAS SIGNED.

9. MR. SHERMAN TESTIFIED THAT MR. SERGANO SAID THAT THE COLLECTIVE AGREEMENT BETWEEN THEM WOULD BE APPLIED TO THE CARPENTERS WORKING AT FORT FRANCES. MR. SHERMAN GAVE EVIDENCE THAT MEMBERS OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA WERE EMPLOYED FROM FEBRUARY 1970 UNTIL MID-JUNE 1970 AND THAT THERE WERE NO EMPLOYEES FROM JUNE 1970 UNTIL LATE APRIL 1971. IN APRIL OF 1971 MR. SHERMAN CONTACTED THE RESPONDENT'S OFFICE IN WINNIPEG AND WAS TOLD THAT MR. SERGANO WAS NO LONGER THERE, THAT HE WAS NOT AN OFFICER OF THE RESPONDENT AND THAT HE HAD NO AUTHORITY TO SIGN A COLLECTIVE AGREEMENT WITH THE APPLICANT. AFTER DISCOVERING THE RESPONDENT'S POSITION, THE APPLICANT FILED THIS APPLICATION FOR CERTIFICATION.

10. UNDER CROSS-EXAMINATION, MR. SHERMAN TESTIFIED THAT THERE WERE THREE EMPLOYEES IN THE KENORA AREA COVERED BY THE DISPUTED COLLECTIVE AGREEMENT AND THAT THESE EMPLOYEES WERE NOT BEING PAID IN ACCORDANCE WITH THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT. MR. SHERMAN TESTIFIED THAT THE RESPONDENT HAD CARPENTERS IN ITS EMPLOY AT THE TIME THE COLLECTIVE AGREEMENT WAS SIGNED AND THAT THESE PERSONS OWNED THEIR TOOLS, WORKED THEIR OWN HOURS AND WERE SUPERVISED BY SOMEONE WHO CAME FROM WINNIPEG. IT ALSO APPEARED FROM MR. SHERMAN'S TESTIMONY THAT THE CARPENTERS INVOLVED WERE PAID

ACCORDING TO THE SQUARE FOOTAGE OF SIDING ERECTED. HE ALSO INFORMED THE BOARD THAT HE BELIEVED THAT THE MEN AFFECTED WERE COVERED BY WORKMEN'S COMPENSATION THROUGH THE RESPONDENT.

11. MR. WILDING TESTIFIED THAT THE RESPONDENT HAD NO KNOWLEDGE OF THE ALLEGED COLLECTIVE AGREEMENT UNTIL IT WAS RAISED IN CONNECTION WITH THIS APPLICATION FOR CERTIFICATION. THE EMPLOYMENT OF MR. SERGANO (ALSO APPARENTLY KNOWN AS TSERGHANOS) WAS TERMINATED BY THE RESPONDENT IN DECEMBER 1970. MR. WILDING GAVE EVIDENCE THAT IT WAS NOT THE POLICY OF THE RESPONDENT'S PRESIDENT TO ALLOW DIVISION MANAGERS TO ENTER INTO LABOUR AGREEMENTS UNLESS THE PRESIDENT HAD GIVEN HIS AUTHORITY. HE TESTIFIED THAT BETWEEN FEBRUARY AND JUNE 1970 AND APRIL 1971 THERE HAD BEEN NO CHANGE IN THE EMPLOYEES' STATUS. HE AGREED THAT THE EMPLOYEES OWNED THEIR OWN TOOLS, APPLIED SIDING AND WORKED THEIR OWN HOURS, THAT THE JOB WAS INSPECTED AFTER IT HAD BEEN FINISHED AND THAT THE MEN WERE PAID ON A SQUARE FOOTAGE BASIS. THROUGHOUT HIS TESTIMONY, MR. WILDING QUITE FAIRLY STATED THAT THE EVIDENCE HE WAS GIVING WAS BY NO MEANS FIRST-HAND AND THAT EVERYTHING WAS TO THE BEST OF HIS KNOWLEDGE. HE WAS THEREFORE UNABLE TO UNEQUIVOCALLY INFORM THE BOARD OF WHETHER OR NOT MR. SERGANO HAD IN FACT RECEIVED AUTHORITY FROM THE RESPONDENT'S PRESIDENT TO EXECUTE THE ALLEGED COLLECTIVE AGREEMENT AND HAD NO KNOWLEDGE REGARDING DEDUCTIONS FROM THE ALLEGED EMPLOYEES WITH RESPECT TO INCOME TAX, CANADA PENSION PLAN AND WORKMEN'S COMPENSATION.

12. HAVING REGARD TO ALL OF THE EVIDENCE BEFORE US, THE BOARD FINDS THAT BETWEEN THE PERIOD FROM FEBRUARY TO JUNE OF 1970, THE RESPONDENT HAD CARPENTERS IN ITS EMPLOY WHO WERE MEMBERS OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA AND THAT AT THE TIME THE ALLEGED COLLECTIVE AGREEMENT WAS EXECUTED THESE EMPLOYEES WERE STILL EMPLOYED BY THE RESPONDENT AS CARPENTERS. THE ONLY DIRECT EVIDENCE BEFORE THE BOARD RELATING TO THE ALLEGED AUTHORITY OF MR. SERGANO TO SIGN A COLLECTIVE AGREEMENT WITH THE APPLICANT IS THE ASSERTION BY MR. SERGANO TO MR. SHERMAN THAT HE HAD AUTHORITY TO SIGN A COLLECTIVE AGREEMENT WITH THE APPLICANT. THE TESTIMONY OF MR. WILDING WAS OF VERY LITTLE PROBATIVE VALUE BECAUSE, AS NOTED EARLIER, HE QUITE FAIRLY STATED THAT HIS TESTIMONY WAS ONLY TO THE BEST OF HIS KNOWLEDGE. IT APPEARED TO THE BOARD THAT NOTHING IN MR. WILDING'S TESTIMONY WAS WITHIN HIS PERSONAL KNOWLEDGE AND THAT HIS TESTIMONY REPRESENTED AT MOST AN EDUCATED GUESS.

13. IN THE RESULT, THE BOARD FINDS THAT MR. SERGANO HAD THE AUTHORITY TO ENTER INTO THE AGREEMENT ON BEHALF OF THE RESPONDENT WITH THE APPLICANT ON APRIL 17, 1970 AND THAT THIS AGREEMENT IS A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(E) OF THE LABOUR RELATIONS ACT. THERE WAS NO EVIDENCE BEFORE THE BOARD THAT THE APPLICANT HAD ABANDONED ITS BARGAINING RIGHTS WHICH FLOWED FROM THIS COLLECTIVE AGREEMENT.

14. ACCORDINGLY, SINCE THE APPLICANT ALREADY HAS BARGAINING RIGHTS WITH RESPECT TO THE EMPLOYEES AFFECTED BY THIS APPLICATION, THIS APPLICATION FOR CERTIFICATION IS DISMISSED.

1015-71-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 759 (APPLICANT) v. KAWNEER INSTALLATIONS LIMITED (RESPONDENT).

BEFORE: R.A. FURNESS, VICE CHAIRMAN AND BOARD MEMBERS E. BOYER AND F.W. MURRAY.

DECISION OF THE BOARD: OCTOBER 15, 1971.

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2. THE APPLICANT FILED TWO CERTIFICATES OF MEMBERSHIP. THE CERTIFICATES ARE SIGNED BY THE MEMBERS AND ARE CHECKED AND CERTIFIED CORRECT BY AN OFFICER OF THE APPLICANT. ONE OF THE CERTIFICATES INDICATES THAT MONTHLY DUES OF \$11.00 HAVE BEEN PAID FOR AT LEAST ONE MONTH WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE TERMINAL DATE OF THE APPLICATION. THE APPLICANT ALSO FILED A COMPLETED FORM 54, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY.

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8. HOWEVER, AS WAS NOTED IN PARAGRAPH 2, THE APPLICANT ACTUALLY FILED IN SUPPORT OF THIS APPLICATION FOR CERTIFICATION, DOCUMENTARY EVIDENCE OF MEMBERSHIP ON BEHALF OF ONLY TWO PERSONS. ONE OF THE TWO CERTIFICATES OF MEMBERSHIP FILED BY THE APPLICANT INDICATES THAT MONTHLY DUES OF \$11.00 HAVE BEEN PAID FOR THE MONTH OF JULY. HOWEVER, THERE IS NO INFORMATION AS TO WHICH YEAR THIS PAYMENT OF MONTHLY DUES HAS MADE OTHER THAN AN INDICATION THAT THE PAYMENT HAS BEEN MADE DURING THE TWENTIETH CENTURY. THEREFORE, WITH RESPECT TO THIS CERTIFICATE OF MEMBERSHIP THE BOARD IS UNABLE TO CONCLUDE THAT THE MONTHLY DUES HAVE BEEN PAID FOR AT LEAST ONE MONTH WITHIN THE SIX MONTH PERIOD OR EVEN WITHIN A PERIOD OF ONE YEAR IMMEDIATELY PRECEDING THE TERMINAL DATE OF THIS APPLICATION.

9. THE APPLICANT IS THEREFORE IN THE POSITION OF HAVING FILED TWO CERTIFICATES OF MEMBERSHIP, ONE OF WHICH DOES NOT INDICATE A PAYMENT OF MEMBERSHIP DUES WITHIN A ONE YEAR PERIOD IMMEDIATELY PRECEDING THE TERMINAL DATE OF THE APPLICATION. THIS LATTER CERTIFICATE OF MEMBERSHIP THEREFORE DOES NOT INDICATE THAT THE PERSON CONCERNED HAS DONE ANY ACT WHICH COULD BE TAKEN AS CONFIRMATORY EVIDENCE OF HIS DESIRE WITH RESPECT TO MEMBERSHIP IN THE APPLICANT. WHERE SUCH CONFIRMATORY EVIDENCE IS LESS THAN A YEAR BUT MORE THAN SIX MONTHS OLD, IT MAY BE CONSIDERED BY THE BOARD AS SUFFICIENT TO WARRANT THE ORDERING

OF A REPRESENTATION VOTE. IF THE CONFIRMATORY EVIDENCE IS MORE THAN ONE YEAR OLD (AS APPEARS TO BE THE SITUATION WITH REGARD TO ONE OF THE TWO CERTIFICATES FILED BY THE APPLICANT IN THIS APPLICATION FOR CERTIFICATION), THE BOARD DOES NOT NORMALLY REGARD SUCH CONFIRMATORY EVIDENCE OF MEMBERSHIP AS BEING SUFFICIENT TO WARRANT THE ORDERING OF EVEN A REPRESENTATION VOTE. SEE, FOR EXAMPLE, BEN BRUINSMA AND SONS LIMITED CASE, OLRB M.R. JULY, 1963, P. 223.

10. THE APPLICANT IS IN THE POSITION OF HAVING SUBMITTED DOCUMENTARY EVIDENCE OF MEMBERSHIP ON BEHALF OF TWO OF THE FOUR PERSONS WHOSE NAMES APPEAR ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT. HOWEVER, AS WAS NOTED ABOVE, ONE OF THE CERTIFICATES OF MEMBERSHIP DOES NOT SATISFY THE BOARD'S REQUIREMENTS AND IN ALL OF THE CIRCUMSTANCES IN THIS APPLICATION THE BOARD FINDS THAT THE APPLICANT HAS SUBMITTED SATISFACTORY DOCUMENTARY EVIDENCE OF MEMBERSHIP ON BEHALF OF ONLY ONE PERSON WHOSE NAME APPEARS ON THE LIST OF FOUR EMPLOYEES FILED BY THE RESPONDENT.

11. IN THE RESULT, THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON OCTOBER 14, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

12. THIS APPLICATION IS THEREFORE DISMISSED.

1002-71-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. GWELL INVESTMENTS LTD. (RESPONDENT).

BEFORE: R.A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND F.W. MURRAY.

DECISION OF THE BOARD: OCTOBER 18, 1971.

1. IN THIS APPLICATION FOR CERTIFICATION THE APPLICANT FILED FOUR COMBINATION APPLICATION FOR MEMBERSHIP AND RECEIPTS. THE COMBINATION APPLICATIONS FOR MEMBERSHIP ARE SIGNED BY THE EMPLOYEES AND THE RECEIPTS ARE COUNTERSIGNED AND INDICATE THAT A PAYMENT OF AT LEAST \$1.00 HAS BEEN MADE WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE TERMINAL DATE OF THE APPLICATION. THE MONEY WAS COLLECTED BY MORE THAN ONE PERSON. THE APPLICANT ALSO FILED A DULY COMPLETED FORM 54, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY.

2. THE RESPONDENT FILED A REPLY, A LIST OF EMPLOYEES CONTAINING EIGHT NAMES ON SCHEDULE A AND ONE NAME ON SCHEDULE B AND SPECIMEN SIGNATURES WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

3. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

4. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 108 OF THE LABOUR RELATIONS ACT.

5. IN THE FORM 49, APPLICATION FOR CERTIFICATION, CONSTRUCTION INDUSTRY, THE APPLICANT CLAIMED THAT THE BARGAINING UNIT APPROPRIATE FOR COLLECTIVE BARGAINING OUGHT TO BE DESCRIBED AS:

"ALL CARPENTERS AND THEIR APPRENTICES
AND CONSTRUCTION LABOUR IN THE GEO-
GRAPHICAL DISTRICT OF KENORA (PATRICIA
PORTION INCLUDED)."

6. IT IS THE USUAL PRACTICE OF THE APPLICANT HEREIN TO SEEK CERTIFICATION ON BEHALF OF EITHER ITS REGULAR CRAFT UNIT OF CARPENTERS AND CARPENTERS' APPRENTICES OR A BARGAINING UNIT CONSISTING OF THE NAMED CRAFTS OR CLASSIFICATIONS IN THE EMPLOY OF AN EMPLOYER IN A GIVEN GEOGRAPHIC AREA ON THE DATE OF THE MAKING OF AN APPLICATION FOR CERTIFICATION. IN THE INSTANT APPLICATION THE APPLICANT HAS CHOSEN TO SEEK THE SECOND TYPE OF BARGAINING UNIT.

7. UPON BEING ADVISED OF THE NUMBER OF NAMES AND CLASSIFICATIONS CONTAINED ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT, THE APPLICANT INDICATED TO THE BOARD THAT IT DID NOT CHALLENGE THE LIST AND CLASSIFICATIONS FILED BY THE RESPONDENT BUT WISHED TO AMEND ITS PROPOSED BARGAINING UNIT TO ITS REGULAR CRAFT UNIT OF CARPENTERS AND CARPENTERS' APPRENTICES.

8. IN OUR OPINION, THE APPLICANT OUGHT NOT TO BE PERMITTED TO MODIFY AND RESTRICT ITS BARGAINING UNIT UPON DISCOVERING THE NUMBER AND THE CLASSIFICATIONS OF THE EMPLOYEES IN THE EMPLOY OF THE RESPONDENT IN A GIVEN GEOGRAPHIC AREA ON THE DATE OF THE MAKING OF THIS APPLICATION FOR CERTIFICATION. IF THE BOARD WERE TO ACCEDE TO THE WISHES OF THE APPLICANT, THE BOARD WOULD, IN EFFECT, BE ENCOURAGING SPECULATIVE APPLICATIONS FOR CERTIFICATION AND WOULD THUS BE PERMITTING THE APPLICANT HEREIN TO MODIFY ITS PROPOSED BARGAINING UNIT DEPENDING UPON ITS MEMBERSHIP POSITION AMONG THE VARIOUS CRAFTS AND CLASSIFICATIONS IN THE EMPLOY OF THE RESPONDENT. IN ADDITION, THE EMPLOYEES AFFECTED BY THIS APPLICATION FOR CERTIFICATION HAVE

BEEN INFORMED IN THE FORM 52, NOTICE TO EMPLOYEES OF APPLICATION FOR CERTIFICATION, CONSTRUCTION INDUSTRY, OF THE BARGAINING UNIT INITIALLY REQUESTED BY THE APPLICANT AND ARE UNAWARE THAT THE APPLICANT IS NOW SEEKING TO EXCLUDE CONSTRUCTION LABOURERS FROM ITS PROPOSED BARGAINING UNIT.

9. IT APPEARS FROM THE MATERIAL BEFORE THE BOARD THAT THE RESPONDENT HAD IN ITS EMPLOY ON THE DATE OF THE MAKING OF THIS APPLICATION IN THE DISTRICT OF KENORA, (PATRICIA PORTION INCLUDED) ONLY CARPENTERS, CARPENTERS' APPRENTICES AND CONSTRUCTION LABOURERS.

HAVING REGARD TO THE FOREGOING CONSIDERATIONS AND PURSUANT TO THE PROVISIONS OF SECTION 6(1) OF THE LABOUR RELATIONS ACT, THE BOARD FURTHER FINDS THAT ALL CARPENTERS, CARPENTERS' APPRENTICES AND ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

10. THE NAMES THAT APPEAR ON THE FOUR COMBINATION APPLICATIONS FOR MEMBERSHIP AND RECEIPTS FILED BY THE APPLICANT CORRESPOND TO NAMES APPEARING ON SCHEDULES A AND B FILED BY THE RESPONDENT.

11. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON OCTOBER 14, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

12. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

13. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE APPLICANT IN THEIR EMPLOYMENT RELATIONS WITH THE RESPONDENT.

14. THE MATTER IS REFERRED TO THE REGISTRAR.

1142-71-JD: LEADER MASONRY & FORMING LIMITED (COMPLAINANT) V. LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837, UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 18, THE FRID CONSTRUCTION COMPANY LIMITED (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS A. MAIN AND F. W. MURRAY.

APPEARANCES AT THE HEARING: B. W. BINNING AND A. WOOD FOR THE COMPLAINANT; RAYMOND KOSKIE AND H. MANCINELLI FOR LABOURERS LOCAL 837; STANLEY SIMPSON AND C. GUAGLIANO FOR CARPENTERS LOCAL 18; R. V. SANICEY, EDGAR H. GEORGE AND PETER J. RICE FOR FRID CONSTRUCTION.

DECISION OF THE BOARD: OCTOBER 27, 1971.

1. THIS IS A COMPLAINT MADE UNDER SECTION 81 OF THE LABOUR RELATIONS ACT.
2. THE COMPLAINANT IS REQUESTING THAT THE BOARD MAKE AN INTERIM ORDER WITH RESPECT TO AN ASSIGNMENT OF WORK WHICH IS IN DISPUTE BETWEEN THE RESPONDENT TRADE UNIONS.
3. THE BOARD IS SATISFIED THAT A STRIKE IS IMMINENT BY REASON OF THE ASSIGNMENT OF WORK WHICH IS THE SUBJECT MATTER OF THE DISPUTE.
4. HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES, THE BOARD DEEMS IT ADVISABLE IN ALL THE CIRCUMSTANCES TO MAKE THE INTERIM ORDER SET OUT BELOW:

THE COMPLAINANT LEADER MASONRY & FORMING LIMITED SHALL ASSIGN THE WORK INVOLVED IN THE ERECTION AND DISMANTLING OF TUBULAR METAL SCAFFOLDING EXTENDING TO A HEIGHT IN EXCESS OF 14 FEET WHICH SCAFFOLDING IS BEING USED FOR BRICKLAYING ON THE HAMILTON THEATRE-AUDITORIUM CONSTRUCTION PROJECT IN HAMILTON TO EMPLOYEES WHO ARE REPRESENTED BY THE LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837.

THIS ORDER SHALL BECOME EFFECTIVE FORTHWITH AND SHALL REMAIN IN EFFECT UNTIL SUCH TIME AS THE BOARD ISSUES A FURTHER DIRECTION.

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1149-71-JD: LONG BRANCH WINDOW AND METAL CLEANING LIMITED (COMPLAINANT) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 721 AND LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS A. MAIN AND F. W. MURRAY.

APPEARANCES AT THE HEARING: R. D. PERKINS AND PAUL SZYMCHUK FOR THE COMPLAINANT; A. GOLDEN, A. MACISAAC AND DAVID ESTRIN FOR IRONWORKERS LOCAL 721; R. KOSKIE AND T. NEIL FOR LABOURERS LOCAL 506.

DECISION OF THE BOARD: OCTOBER 27, 1971.

1. THE NAMES "THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721, AFFILIATED WITH THE AFL-CIO AND INTERNATIONAL LABOURERS UNION OF NORTH AMERICA, LOCAL 506" APPEARING IN THE STYLE OF CAUSE OF THIS COMPLAINT AS THE NAMES OF THE RESPONDENTS ARE AMENDED TO READ: "INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 721 AND LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506".
2. THIS IS A COMPLAINT MADE UNDER SECTION 81 OF THE LABOUR RELATIONS ACT.
3. THE COMPLAINANT IS REQUESTING THAT THE BOARD MAKE AN INTERIM ORDER WITH RESPECT TO AN ASSIGNMENT OF WORK WHICH IS IN DISPUTE BETWEEN THE RESPONDENT TRADE UNIONS.
4. THE BOARD IS SATISFIED THAT A STRIKE IS IMMINENT BY REASON OF THE ASSIGNMENT OF WORK WHICH IS THE SUBJECT MATTER OF THE DISPUTE.
5. HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES, THE BOARD DEEMS IT ADVISABLE IN ALL THE CIRCUMSTANCES TO MAKE THE INTERIM ORDER SET OUT BELOW:

THE COMPLAINANT LONG BRANCH WINDOW AND METAL CLEANING LIMITED SHALL ASSIGN THE WORK INVOLVED IN THE REMOVAL OF PROTECTIVE FABRIC FROM STAINLESS STEEL EXTERIOR PANELS AND THE CLEANING OF EXTERIOR STAINLESS STEEL PANELS AND STAINLESS STEEL WINDOW FRAMES AND WINDOWS WHICH WORK IS BEING PERFORMED ON THE COMMERCE COURT CONSTRUCTION PROJECT IN THE CITY OF TORONTO TO EMPLOYEES WHO ARE REPRESENTED BY THE LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506.

THIS ORDER SHALL BECOME EFFECTIVE FORTHWITH
AND SHALL REMAIN IN EFFECT UNTIL SUCH TIME
AS THE BOARD ISSUES A FURTHER DIRECTION.

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1024-71-R: DUFFERIN-PEEL SEPARATE SCHOOL BOARD CARETAKERS AND MAIN-
TENANCE ASSOCIATION (APPLICANT) V. DUFFERIN-PEEL COUNTY ROMAN CATHO-
LIC SEPARATE SCHOOL BOARD (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFE AND H. F. IRWIN.

APPEARANCES AT THE HEARING: MARIANO MOTA AND JOHN K. RALPH FOR
THE APPLICANT, J. V. ZUCCHERO FOR THE RESPONDENT.

DECISION OF THE BOARD: OCTOBER 26, 1971.

1. THIS IS AN APPLICATION FOR CERTIFICATION.

2. PRIOR TO THE HEARING OF THIS MATTER ON OCTOBER 19, 1971,
THE APPLICANT WAS ADVISED BY THE BOARD THAT IT WOULD BE REQUIRED TO
PROVE THAT IT WAS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)
(N) OF THE LABOUR RELATIONS ACT.

3. AT THE HEARING, MR. MOTA TESTIFIED THAT THE EMPLOYEES HAD
A MEETING ON JULY 9, 1971, WHEREIN IT WAS DECIDED TO FORM AN ASSOCIA-
TION. IN THIS REGARD THERE WAS FILED WITH THE BOARD THE MINUTES OF
TWO SUBSEQUENT MEETINGS HELD ON AUGUST 27 AND SEPTEMBER 3, 1971,
ALONG WITH A COPY OF THE CONSTITUTION. HOWEVER, A REVIEW OF THESE
DOCUMENTS DISCLOSES THAT THE OFFICERS OF THE ASSOCIATION WERE ELECT-
ED PRIOR TO THE ADOPTION OF THE CONSTITUTION BY THE MEMBERSHIP. SINCE
THIS ELECTION WAS NOT SUBSEQUENTLY CONFIRMED OR RATIFIED BY THE MEM-
BERS, OFFICERS WERE NOT ELECTED IN ACCORDANCE WITH THE CONSTITUTION
OF THE ASSOCIATION AND THEREFORE IT CANNOT ACQUIRE THE STATUS OF A
TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N). (REFERENCE IN
THIS REGARD SHOULD BE HAD TO THE KITCHENER PUBLIC SCHOOL BOARD CASE
OLRB M.R. JANUARY 1961 P.789 AT PP.790 AND 791, AND THE RELEVANT
CASES QUOTED THEREIN.) ACCORDINGLY, THIS APPLICATION IS DISMISSED.

4. SINCE THE INSTANT CASE MARKS THE FIRST APPEARANCE OF THE
APPLICANT BEFORE THE BOARD, WE BELIEVE THAT WE SHOULD DRAW ATTEN-
TION TO AT LEAST TWO OTHER DEFICIENCIES PRESENT IN THIS APPLICATION.
FIRSTLY, THE ARTICLE DEALING WITH MEMBERSHIP IN THE CONSTITUTION
PROVIDES AS FOLLOWS:

"THE MEMBERSHIP OF THE ASSOCIATION SHALL CONSIST OF ALL EMPLOYEES IN CARETAKING AND MAINTENANCE, WORKING IN EXCESS OF 24 HOURS PER WEEK, AND EMPLOYED BY THE DUFFERIN-PEEL ROMAN CATHOLIC SEPARATE SCHOOL BOARD, PROVIDED THEY HAVE COMPLETED A PROBATIONARY PERIOD."

THE POLICY OF THE BOARD IN THIS REGARD, IS TO REFUSE TO CONFER BARGAINING RIGHTS ON A TRADE UNION WHICH DISENFRANCHISES SOME OF THE EMPLOYEES WHOM IT WOULD BE REQUIRED TO REPRESENT IF IT WERE CERTIFIED. [REFERENCE IN THIS REGARD SHOULD BE HAD TO THE GAYMER & OUL-TRAM CASE 1954 CLLC ARTICLE 17,073 AND LINDSAY ANTENNA & SPECIALTY PRODUCTS CASE OLRB M.R. JULY 1961 P.125. SEE ALSO THE KITCHENER PUBLIC SCHOOL BOARD CASE (SUPRA)].

SECONDLY, THE EVIDENCE OF MEMBERSHIP FILED AS GROSSLY DEFICIENT IN THAT NOT ONLY IS THERE AN ABSENCE OF COUNTERSIGNATURES OF THE PAYORS BUT MOREOVER NO MONEY PAYMENT WHATEVER IS DISCLOSED. (IN THIS REGARD, REFERENCE SHOULD BE HAD TO THE HOVE TAXI LTD. CASE [1971] OLRB REP. AT P.66).

854-71-M: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. LIVINGSTON TRANSPORTATION LIMITED (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND F.W. MURRAY.

APPEARANCES AT THE HEARING: V.T. ROSEMARY FOR THE APPLICANT; T.F. STORIE, W. COULTART AND J. WALDIE FOR THE RESPONDENT.

DECISION OF THE BOARD: OCTOBER 20, 1971.

1. THIS IS AN APPLICATION PURSUANT TO SECTION 95(2) OF THE LABOUR RELATIONS ACT. THE QUESTION REFERRED TO THE BOARD IS WHETHER TWO PERSONS, MR. JOHN BURWELL AND MR. LIVELY ARE EMPLOYEES OF LIVINGSTON TRANSPORTATION LIMITED AT ITS PLANT IN ST. THOMAS, ONTARIO. SUBSEQUENT TO THE APPLICATION THE APPLICANT WITHDREW ITS REQUEST FOR THE APPOINTMENT OF AN EXAMINER WITH RESPECT TO MR. LIVELY AND ASKED FOR THE INCLUSION OF A MR. JOHN TIMPANY AND A MR. CARL JONES IN ADDITION TO MR. BURWELL.

2. THE RESPONDENT CONTENDS THAT THE DETERMINATION SOUGHT BY THE APPLICANT AS TO WHETHER THE AFORESAID PERSONS ARE COVERED BY A COLLECTIVE AGREEMENT SHOULD BE DETERMINED BY AN ARBITRATION BOARD. IT FURTHER SUBMITS THAT THESE MATTERS ARE BEING PROCESSED THROUGH THE GRIEVANCE PROCEDURE PURSUANT TO THE TERMS OF THE COLLECTIVE

AGREEMENT AND THAT NO DISCUSSIONS HAVE BEEN HELD AND THEREFORE NO QUESTION HAS ARISEN UNDER SECTION 95(2).

3. THE SUBMISSIONS MADE BY THE RESPONDENT IN THIS CASE ARE NOT UNFAMILIAR AND THE MATTER HAS BEEN THOROUGHLY DEALT WITH BY THIS BOARD IN MANY CASES PRIOR TO THIS APPLICATION. SEE UNITED STEELWORKERS OF AMERICA V. ALGOMA STEEL CORPORATION LIMITED, 1966 DECEMBER OLRB MTHLY. REP. 722. IN THAT CASE THE BOARD SAID AT PAGE 723:

"THE APPLICANT SUBMITS THAT A QUESTION HAS ARISEN DURING THE OPERATION OF THE COLLECTIVE AGREEMENT BETWEEN THEM AS TO WHETHER THE PERSONS ON THE SCHEDULE ARE EMPLOYEES WITHIN THE MEANING OF THE ACT AND THAT ACCORDINGLY IT IS ENTITLED TO THE RELIEF WHICH IT IS SEEKING PURSUANT TO SECTION 79(2). THE RESPONDENT SUBMITS THAT THE REAL ISSUE BETWEEN THE PARTIES IS WHETHER OR NOT THE PERSONS IN QUESTION FALL WITHIN THE SCOPE OF THE BARGAINING UNIT DEFINED BY THE BOARD AND THAT THIS IS A MATTER FOR DETERMINATION IN ACCORDANCE WITH THE GRIEVANCE PROCEDURE ESTABLISHED IN THE COLLECTIVE AGREEMENT AND THE "MANUAL" WHICH IS AN APPENDIX TO THE AGREEMENT.

THE BOARD HAS RECOGNIZED THAT THE QUESTION WHETHER A PERSON IS COVERED BY A COLLECTIVE AGREEMENT AND THE QUESTION AS TO WHETHER A PERSON IS AN EMPLOYEE FOR THE PURPOSES OF THE ACT ARE TWO SEPARATE ISSUES. THE BOARD HAS FURTHER RECOGNIZED THAT THE FORMER QUESTION IS PROPERLY ONE FOR DETERMINATION BY WAY OF ARBITRATION AND THAT THE LATTER IS ONE THAT FALLS WITHIN THE PURVIEW OF THE BOARD'S JURISDICTION (SEE CANADIAN CAR FORT WILLIAM DIVISION HAWKER SIDDELEY CANADA LTD. CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1966, P. 763). THE BOARD HAS ALSO RECOGNIZED THAT ITS DETERMINATION AS TO WHETHER OR NOT A PERSON IS AN EMPLOYEE FOR PURPOSES OF THE ACT IS NOT NECESSARILY THE SAME AS A DETERMINATION AS TO WHETHER THAT PERSON IS INCLUDED IN A DEFINED BARGAINING UNIT. WHILE A PERSON MAY BE AN EMPLOYEE FOR THE PURPOSES OF THE ACT, THAT SAME PERSON MAY NOT BE AN EMPLOYEE WHO IS INCLUDED IN A BARGAINING UNIT. CONVERSE-

LY, EVEN THOUGH THE BOARD FINDS THAT A PERSON IS NOT AN EMPLOYEE FOR PURPOSES OF THE ACT, THAT PERSON MAY FALL WITHIN THE DESCRIPTION OF A BARGAINING UNIT CONTAINED IN A COLLECTIVE AGREEMENT (SEE MANNESMANN TUBE COMPANY LIMITED CASE, BOARD FILE NO. 11552-65-M)."'

WE SEE NO REASON TO DEPART FROM THE DECISION OF THE BOARD IN THAT CASE. ACCORDINGLY, THE SUBMISSIONS BY THE RESPONDENT THAT THIS MATTER SHOULD BE DEALT WITH UNDER THE TERMS OF THE COLLECTIVE AGREEMENT IS DENIED.

4. A FURTHER GROUND RAISED IS THAT NO DISCUSSIONS HAVE BEEN HELD BY THE PARTIES. OBVIOUSLY, FROM THE SUBMISSIONS, THE PARTIES HAVE GONE THROUGH THE GRIEVANCE PROCEDURE. THIS BOARD IS CONCERNED WITH SITUATIONS WHERE NO DISCUSSIONS HAVE BEEN HELD PRIOR TO THE APPLICATION BEING MADE SO THAT IN EFFECT NO QUESTION ARISES AND THE BOARD HAS INDICATED THAT THERE SHOULD BE A DIALOGUE BETWEEN THE PARTIES PRIOR TO THE SEEKING OF RELIEF UNDER THIS SECTION. THE BOARD IS NOT CONCERNED WITH THE FORM OF THE DIALOGUE BUT RATHER THAT SUCH A DIALOGUE TAKES PLACE. SINCE THE PARTIES HAVE DISCUSSED THIS MATTER DURING THE GRIEVANCE PROCEDURE IN OUR VIEW IS SUFFICIENT COMPLIANCE WITH THE PROVISIONS OF THE ACT. ACCORDINGLY, THE SECOND GROUND ADVANCED BY THE RESPONDENT CANNOT SUCCEED.

5. MR. S.G. GRIZZLE, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF JOHN BURWELL, JOHN TIMPANY AND CARL JONES.

762-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. GEORGE AND ASMUSSEN LIMITED (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

DECISION OF THE BOARD: OCTOBER 26, 1971.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.
2. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 108 OF THE LABOUR RELATIONS ACT.
3. THE APPLICANT IS SEEKING CERTIFICATION ON BEHALF OF A BARGAINING UNIT DESCRIBED AS:

"ALL EMPLOYEES OF GEORGE AND ASMUSSEN LIMITED WORKING IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS, AND SIMILAR EQUIPMENT AND THOSE PREMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND THOSE ABOVE THE RANK OF NON-WORKING FOREMAN."

4. THE APPLICANT TAKES THE POSITION THAT THE TWO PERSONS IN THE EMPLOY OF THE RESPONDENT IN OTTAWA ON JULY 16, 1971, THE DATE OF THE MAKING OF THIS APPLICATION FOR CERTIFICATION, ARE, BY THE NATURE OF THEIR WORK, INCLUDED IN THE BARGAINING UNIT DEFINED ABOVE.

5. THE RESPONDENT, ON THE OTHER HAND, ADOPTS THE VIEW THAT THE TWO PERSONS IN QUESTION, JOAO ARAGAO AND PIERRE PAQUETTE WERE, AT ALL RELEVANT TIMES, EMPLOYED FOR THE MAJORITY OF THE WORK DAY AS GENERAL LABOURERS.

6. THE BOARD HAS CONSIDERED THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER IN THIS MATTER DATED AUGUST 19, 1971, AND THE REPRESENTATION OF THE PARTIES THEREON.

7. CONSIDERING, FIRSTLY, THE WORK PERFORMED BY JOAO ARAGAO. ON THE DATE OF THE MAKING OF THIS APPLICATION FOR CERTIFICATION, THE EVIDENCE REVEALS THAT WHILE HE SPENT A CONSIDERABLE AMOUNT OF TIME OPERATING A FORK-LIFT WITH A 30 FOOT CAPACITY, HE WAS NEVERTHELESS ENGAGED FOR THE MAJORITY OF HIS TIME IN THE PREPARATION AND MIXING OF MORTAR IN CONNECTION WITH THE RESPONDENT'S MASONRY OPERATION.

8. CONSIDERING, SECONDLY, THE WORK PERFORMED BY PIERRE PAQUETTE. IT IS ALSO CLEAR THAT PAQUETTE SPENT AT LEAST HALF OF HIS TIME ENGAGED IN THE PREPARATION AND MIXING OF MORTAR AND IN GENERAL LABOURING WORK.

9. WHILE IT MAY WELL BE THAT THE WORK OF OPERATING FORK-LIFTS AND TOW MOTORS WOULD FALL WITHIN THE TERM "SIMILAR EQUIPMENT" INCLUDED IN THE BARGAINING UNIT DEFINED IN PARAGRAPH 3 HEREIN, IT IS NEVERTHELESS CLEAR THAT ARAGAO AND PAQUETTE SPENT LESS THAN HALF OF THEIR WORKING DAY ON JULY 16, 1971, ENGAGED IN OPERATING THESE MACHINES. INDEED, IT IS CLEAR FROM THE REPORT OF THE EXAMINER THAT AT TIMES, OTHER THAN JULY 16, 1971, ARAGAO AND PAQUETTE SPENT MOST OF THEIR TIME IN PERFORMING THE WORK OF A CONSTRUCTION LABOURER AND LESS THAN HALF OF THEIR TIME OPERATING A FORK-LIFT AND/OR A TOW MOTOR.

10. IN CONSTRUCTION INDUSTRY CASES IT HAS BEEN THE PRACTICE OF THE BOARD WHERE EMPLOYEES ENGAGE IN THE WORK OF DIFFERENT CRAFTS AND WHERE THEY ARE PAID ONLY ONE RATE (THERE IS NO EVIDENCE BEFORE THE BOARD THAT THESE TWO EMPLOYEES WERE PAID MORE THAN ONE RATE) TO CHARACTERIZE THE CRAFT IN WHICH THEY ARE EMPLOYED FOR A MAJORITY OF THEIR TIME AS THE ONE GOVERNING THEIR STATUS ON AN APPLICATION FOR CERTIFICATION. FOR EXAMINE, SEE O. J. GAFFNEY LIMITED, O.L.R.B. MONTHLY REPORT AUGUST 1964, P. 233; MCNAMARA CONSTRUCTION OF ONTARIO LIMITED, O.L.R.B. MONTHLY REPORT, DECEMBER 1964, P. 419; NEDAN FORMING COMPANY LIMITED, O.L.R.B. MONTHLY REPORT, MAY 1965, P. 100; JOHN-SON-KIEWIT SUBWAY CORPORATION, O.L.R.B. MONTHLY REPORT, JUNE 1966, P. 182.

11. HAVING REGARD TO THE FOREGOING, THE BOARD FINDS THAT ON THE DATE OF THE MAKING OF THE APPLICATION, JOAO ARAGAO AND PIERRE PAQUETTE WERE EMPLOYED BY THE RESPONDENT AS CONSTRUCTION LABOURERS. THE BOARD ACCORDINGLY FINDS THAT THERE WERE NO EMPLOYEES ON THE BARGAINING UNIT PROPOSED BY THE APPLICANT. IT FOLLOWS THAT HAVING REGARD TO THE PROVISIONS OF SECTION 6(1) OF THE LABOUR RELATIONS ACT, THERE IS NO APPROPRIATE BARGAINING UNIT AND THE APPLICATION MUST THEREFORE BE AND IS ACCORDINGLY DISMISSED.

866-71-R: INTERNATIONAL ALLIANCE THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA LOCAL 58, TORONTO (APPLICANT) V. VICTOR PRODUCTIONS LIMITED AND CO. (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: THOMAS W. G. PRATT FOR THE APPLICANT; DANIEL KAYFETZ AND LOU LANDERS FOR THE RESPONDENT.

DECISION OF THE BOARD: OCTOBER 28, 1971.

1. THE NAME "VICTOR PRODUCTIONS LIMITED OPERATING THE VICTORY THEATRE" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "VICTOR PRODUCTIONS LIMITED AND Co."

2. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE APPLICANT WAS REQUIRED TO PROVE ITS STATUS AS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT. MR. FULLER WHO HAS BEEN THE PRESIDENT OF THE APPLICANT SINCE 1963 TESTIFIED THAT THE APPLICANT HAS BEEN A CHARTERED LOCAL OF INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE

OPERATORS OF THE UNITED STATES AND CANADA SINCE 1905. THE CONSTITUTION OF THE INTERNATIONAL UNION PROVIDES IN ARTICLE ONE, SECTION 3 IN PART AS FOLLOWS:

"THE MEMBERSHIP OF THIS ALLIANCE SHALL COMPRISE THE MEMBERS IN GOOD STANDING OF SUCH LOCAL UNIONS AS SHALL HOLD A CHARTER FROM THIS ALLIANCE, AND SAID AFFILIATED LOCAL UNIONS AND SUCH PERSONS WHO, HAVING BEEN MEMBERS OF ANY LOCAL UNION WHICH HAS HAD ITS CHARTER REVOKED OR SUSPENDED, SHALL RETAIN THEIR MEMBERSHIP IN THIS ALLIANCE IN THE MANNER PROVIDED IN THESE LAWS.

ELIGIBILITY FOR MEMBERSHIP IN THIS ALLIANCE SHALL BE RESTRICTED TO CITIZENS OF THE UNITED STATES OF AMERICA, OR CANADA, OR ANY TERRITORY IN WHICH THE ALLIANCE EXERCISES JURISDICTION, AND WHEN APPLICATION IS MADE IN CANADA, TO ANY BRITISH SUBJECT. THE FOREGOING REQUIREMENT MAY BE WAIVED BY THE GENERAL SECRETARY-TREASURER, UPON APPLICATION OF THE LOCAL UNION INVOLVED, WHERE THE FACTS IN HIS JUDGMENT WARRANT IT."

ARTICLE NINETEEN, SECTION 2 OF THE SAME CONSTITUTION READS AS FOLLOWS:

"HOME RULE.

HOME RULE IS GRANTED TO ALL AFFILIATED LOCAL UNIONS OF THIS ALLIANCE AND THIS SHALL BE CONSTRUED TO CONFER UPON EACH LOCAL UNION THE AUTHORITY TO EXERCISE FULL AND COMPLETE CONTROL OVER ITS OWN AFFAIRS; PROVIDED, HOWEVER, THAT NO LOCAL UNION SHALL TAKE ANY ACTIONS OR ADOPT ANY LAWS WHICH CONFLICT WITH ANY PORTION OF THIS CONSTITUTION AND BY-LAWS."

3. THE CONSTITUTION AND BY-LAWS OF LOCAL 58, THAT IS THE APPLICANT LOCAL, CONTAINS THE FOLLOWING PROVISIONS WITH RESPECT TO MEMBERSHIP:

"ARTICLE II.
MEMBERS

SEC. 2. NO APPLICATION FOR MEMBERSHIP SHALL BE RECEIVED OR NO APPLICANT SHALL BE ACCEPTED INTO MEMBERSHIP (EXCEPT ON TRANSFER OR WITHDRAWAL CARD) WHO HAS NOT BEEN A BONA FIDE RESIDENT OF THE JURISDICTION OF THIS UNION FOR A PERIOD OF AT LEAST TWO YEARS, PRECEDING THE MAKING OF SUCH APPLICATION. NO APPLICANT SHALL BE ADMITTED INTO MEMBERSHIP WHO HAS FAILED TO PASS A SATISFACTORY EXAMINATION AS TO HIS QUALIFICATIONS. NO APPLICANT SHALL BE ADMITTED INTO MEMBERSHIP WHO HAS NOT BEEN A MEMBER IN GOOD STANDING OF WHATEVER CRAFT HE HAS FOLLOWED PREVIOUS TO DATE OF HIS APPLICATION (PROVIDED THAT THERE HAS BEEN A LOCAL OF THE PARTICULAR CRAFT IN HIS CITY). ALL APPLICANTS FOR MEMBERSHIP MUST BE TWENTY-ONE YEARS TO MORE OF AGE AT THE TIME OF ADMISSION INTO MEMBERSHIP; HE MUST BE ABLE TO READ, WRITE AND SPEAK THE ENGLISH LANGUAGE, OF GOOD MORAL CHARACTER, AND BE VOUCHERED FOR BY AT LEAST FOUR MEMBERS WHO THEMSELVES HAVE BEEN MEMBERS FOR AT LEAST TWO YEARS, AND WHO HAVE WORKED WITH APPLICANT IN A LEGITIMATE THEATRE IN THIS CITY OR COUNTY."

4. THE PROVISIONS OF THE CONSTITUTION AND BY-LAWS OF LOCAL 58 DO NOT LIFT THE RESTRICTION OF MEMBERSHIP TO CITIZENS OF CANADA AND BRITISH SUBJECTS EXPRESSED IN THE CONSTITUTION OF THE INTERNATIONAL AND INDEED IT WOULD APPEAR TO BE PROHIBITED FROM SO DOING BY ARTICLE NINETEEN, SECTION 2 OF THE INTERNATIONAL CONSTITUTION CITED ABOVE. IN FACT THE CONSTITUTION OF THE LOCAL ADDS RESTRICTIONS WITH RESPECT TO AGE, FACILITY WITH THE ENGLISH LANGUAGE, MORAL CHARACTER AND LENGTH OF RESIDENCE.

5. THE MATTER IS OF IMPORTANCE BECAUSE OF THE PROVISIONS OF SECTION 12 [FORMERLY SECTION 10] OF THE LABOUR RELATIONS ACT WHICH PROVIDES AS FOLLOWS:

"THE BOARD SHALL NOT CERTIFY A TRADE UNION IF ANY EMPLOYER OR ANY EMPLOYERS' ORGANIZATION HAS PARTICIPATED IN ITS FORMATION OR ADMINISTRATION OR HAS CONTRIBUTED FINANCIAL OR OTHER SUPPORT TO IT OR IF IT DISCRIMINATES AGAINST ANY PERSON BECAUSE OF HIS RACE, CREED, COLOUR, NATIONALITY, ANCESTRY OR PLACE OF ORIGIN."

6. IN OUR OPINION THE RESTRICTIONS TO MEMBERSHIP CONTAINED IN THE CONSTITUTION REVIEWED FALL WITHIN THE PROHIBITION CONTAINED IN SECTION 12.

7. THE ACT FURTHER PROVIDES, HOWEVER, UNDER SECTION 92(4) [FORMERLY SECTION 77(4)] THAT:

"WHERE THE BOARD IS SATISFIED THAT A TRADE UNION HAS AN ESTABLISHED PRACTICE OF ADMITTING PERSONS TO MEMBERSHIP WITHOUT REGARD TO THE ELIGIBILITY REQUIREMENTS OF ITS CHARTER, CONSTITUTION OR BY-LAWS, THE BOARD, IN DETERMINING WHETHER A PERSON IS A MEMBER OF A TRADE UNION, NEED NOT HAVE REGARD FOR SUCH ELIGIBILITY REQUIREMENTS."

8. IN THE JOURNAL PUBLISHING COMPANY OF OTTAWA, LIMITED CASE, O.L.R.B. MONTHLY REPORT DECEMBER 1970, P. 925, THE BOARD DEALT WITH A QUESTION OF QUALIFICATION OF MEMBERSHIP SIMILAR TO THAT RAISED IN THE PRESENT CASE. IT WAS STATED IN PARAGRAPHS 15 AND 16 OF THAT CASE THAT:

"15. IN ORDER THAT AN ESTABLISHED PRACTICE BE PROVED WITHIN THE MEANING OF SECTION 77(4) [NOW SECTION 92(4)] OF THE ACT, IT IS NECESSARY THAT THE UNION PROVE THAT PERSONS WHO WERE NOT CANADIAN CITIZENS AND WHO HAVE NOT DECLARED THEIR INTENTION OF BECOMING CANADIAN CITIZENS HAD IN FACT BEEN ADMITTED TO MEMBERSHIP NOTWITHSTANDING THE ELIGIBILITY REQUIREMENTS OF THE CHARTER, CONSTITUTION OR BY-LAWS IN THAT REGARD. IF THE UNION HAD KNOWINGLY ADMITTED SUCH NON-CITIZENS INTO MEMBERSHIP, THE BOARD WOULD THEN BE IN A POSITION TO FIND THAT IT WAS SATISFIED THAT THE UNION HAD AN ESTABLISHED PRACTICE OF ADMITTING PERSONS TO MEMBERSHIP WITHOUT REGARD TO THE ELIGIBILITY REQUIREMENTS OF ITS CHARTER, CONSTITUTION OR BY-LAWS, AS CONTEMPLATED BY SECTION 77(4). THE INTENTION TO DO SO IS NOT SUFFICIENT. THE ACTUAL PRACTICE MUST BE ESTABLISHED.

16. WHILE CITIZENSHIP IS NOT NECESSARILY SYNONYMOUS WITH NATIONALITY, ANCESTRY, OR PLACE OF ORIGIN, RESTRICTIONS ON CITIZENSHIP ARE CONTRARY TO THE PURPOSE AND INTENT OF SECTION 10 [NOW SECTION 12] OF THE ACT WHICH SPECIFI-

CALLY PROHIBITS DISCRIMINATION BECAUSE OF NATIONALITY, ANCESTRY, OR PLACE OF ORIGIN. IF THERE IS OBJECTION TO THE FACT THAT A PERSON IS NOT A CANADIAN CITIZEN AND WILL NOT DECLARE HIS INTENTION TO BECOME ONE, THE OBJECTION MUST ACCORDINGLY BE TO HIS RACE, ANCESTRY, OR NATIONALITY OR TO THE FACT THAT HIS PLACE OF ORIGIN WAS ELSEWHERE THAN CANADA. SUCH A RESTRICTION IS, IN OUR VIEW, CONTRARY TO THE PURPOSE AND INTENT OF SECTION 10 OF THE ACT AND ACCORDINGLY THE BOARD HAS NO JURISDICTION TO CERTIFY A UNION THAT MAKES CITIZENSHIP A QUALIFICATION OF MEMBERSHIP. WHILE THE EVIDENCE ESTABLISHES THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) [NOW SECTION 1(1)(N)] OF THE LABOUR RELATIONS ACT, BECAUSE OF THE FACT IT DISCRIMINATES AGAINST A PERSON BECAUSE OF RACE, NATIONALITY, ANCESTRY, OR PLACE OF ORIGIN WITHIN THE MEANING OF SECTION 10 OF THE ACT, THE BOARD IS NOT ABLE TO CERTIFY THE APPLICANT TRADE UNION."

9. THE EVIDENCE IN THE PRESENT CASE IS THAT, IN THE RECOLLECTION OF MR. FULLER, THE QUESTION OF QUALIFICATION BY CITIZENSHIP HAS NEVER ARISEN WITH RESPECT TO APPLICANTS FOR MEMBERSHIP SO THAT THE EVIDENCE FALLS SHORT OF PROVING, IN THE LANGUAGE OF THE JOURNAL PUBLISHING COMPANY OF OTTAWA, LIMITED CASE (SUPRA), THAT PERSONS WHO WERE NOT CANADIAN CITIZENS HAD IN FACT BEEN ADMITTED TO MEMBERSHIP NOTWITHSTANDING THE ELIGIBILITY REQUIREMENTS OF THE CONSTITUTION. IT IS BEYOND DISPUTE, ON THE EVIDENCE, THAT THE APPLICANT UNION HAS NOT "KNOWINGLY ADMITTED SUCH NON-CITIZENS INTO MEMBERSHIP".

10. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT. THE BOARD ALSO FINDS, HOWEVER, ON THE BASIS OF THE EVIDENCE AND HAVING REGARD TO THE PRINCIPLES STATED IN THE JOURNAL PUBLISHING COMPANY OF OTTAWA, LIMITED CASE (SUPRA), THAT THE APPLICANT DISCRIMINATES AGAINST PERSONS BECAUSE OF RACE, NATIONALITY, ANCESTRY OR PLACE OF ORIGIN CONTRARY TO THE PROVISIONS OF SECTION 12 OF THE ACT.

11. THE BOARD IS THEREFORE UNABLE TO CERTIFY THE APPLICANT AS BARGAINING AGENT AND THE APPLICATION IS ACCORDINGLY DISMISSED.

868-71-R: UNITED PAPERMAKERS AND PAPERWORKERS AFL-CIO, CLC, LOCAL 894 (APPLICANT) v. ATLANTIC PACKAGING COMPANY (RESPONDENT) v. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: MAURICE W. WRIGHT, Q.C. AND W. C. OLIVER FOR THE APPLICANT; SYDNEY M. HARRIS, Q.C. FOR THE RESPONDENT; WM. WALKER FOR THE INTERVENER.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER O. HODGES: OCTOBER 25, 1971.

1. HAVING REGARD TO THE EVIDENCE, THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.
2. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS PAPER MILL OPERATIONS AT SCARBOROUGH, SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, OFFICE STAFF, TESTERS AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT ENTERED INTO ON JULY 1, 1971, BETWEEN THE RESPONDENT AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
3. THERE IS ON FILE WITH THE BOARD A COPY OF A PURPORTED COLLECTIVE AGREEMENT ENTERED INTO BETWEEN THE RESPONDENT AND THE ATLANTIC PACKAGING COMPANY EMPLOYEES' ASSOCIATION, HEREINAFTER REFERRED TO AS THE ASSOCIATION. AT THE HEARING OF THIS MATTER, BOTH THE APPLICANT AND THE RESPONDENT, IN EFFECT CHALLENGED THE STATUS OF THE ASSOCIATION. IT WAS ACCORDINGLY SUBMITTED THAT NO WEIGHT BE GIVEN TO THIS DOCUMENT AND THAT THE BOARD, ON THE BASIS OF THE COUNT, SHOULD CERTIFY THE APPLICANT OUTRIGHT.
4. UPON HEARING THE EVIDENCE OF MR. ROWSELL, WHO IDENTIFIED HIMSELF AS BOTH PRESIDENT OF THE APPLICANT AND VICE-PRESIDENT OF THE ASSOCIATION, WE FIND THAT, IN THE ABSENCE OF THE EXISTENCE OF A CONSTITUTION OR OTHER DOCUMENTARY EVIDENCE WHICH WOULD ESTABLISH THAT THE ASSOCIATION IS A VIABLE ENTITY, IT DOES NOT QUALIFY AS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE ACT. ACCORDINGLY, WE FIND THAT THERE IS NO COLLECTIVE AGREEMENT IN EXISTENCE WITHIN THE MEANING OF SECTION 1(1)(E) OF THE ACT AND THAT THEREFORE THIS IS NOT A DISPLACEMENT SITUATION NECESSITATING THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

. . .

6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER H. F. IRWIN: OCTOBER 25, 1971.

1. I DISSENT.

2. IN THE BOARD OF EDUCATION FOR THE CITY OF PETERBOROUGH CASE, OLRB M.R. OCTOBER, 1968 AT P. 689 (HEREINAFTER REFERRED TO AS THE PETERBOROUGH CASE), NOTWITHSTANDING THAT:

- (A) THE APPLICANT UNION WAS IN A MEMBERSHIP POSITION ENTITLING IT TO OUTRIGHT CERTIFICATION; AND
- (B) THE PETERBOROUGH BOARD OF EDUCATION CARE-TAKERS AND MAINTENANCE ASSOCIATION WAS NOT FOUND TO BE A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT ALTHOUGH IT APPEARED TO BE; AND
- (C) NO DOCUMENT PURPORTING TO BE A COLLECTIVE AGREEMENT BETWEEN THE SAID ASSOCIATION AND THE RESPONDENT WAS ADDUCED AS EVIDENCE BEFORE THE BOARD,

THE BOARD FOUND THAT IN THE CIRCUMSTANCES OF THAT CASE INCLUDING THE "BARGAINING RELATIONSHIP" WHICH HAD EXISTED BETWEEN THE RESPONDENT AND THE SAID ASSOCIATION COMPELLED IT TO DIRECT THE HOLDING OF A ONE-WAY REPRESENTATION VOTE WITH ONLY THE NAME OF THE APPLICANT UNION ON THE BALLOT.

AT PAGE 693, THE BOARD STATED:

- 14. UNDER THE PROVISIONS OF SECTION 7(2) OF THE ACT THE BOARD IS ENTITLED TO ORDER A REPRESENTATION VOTE EVEN IF THE APPLICANT HAS AS MEMBERS MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT, AND IT DOES SO IN THIS CASE. IN OUR VIEW, THE EXISTENCE OF THE ASSOCIATION WHICH APPEARS TO BE A TRADE UNION, THE BARGAINING RELATIONSHIP WHICH HAS EXISTED FOR AN EXTENDED PERIOD OF TIME BETWEEN THE ASSOCIATION AND THE RESPONDENT, REFERENCES IN THE

EVIDENCE TO "THE PRESENT AGREEMENT AND THE ONE BEFORE IT," ALTHOUGH NO AGREEMENT WAS IN FACT PROVED, TOGETHER WITH ALL THE OTHER CIRCUMSTANCES OF THE CASE, WARRANT THE ORDERING OF A REPRESENTATION VOTE.

3. THE INSTANT CASE, AS IN THE PETERBOROUGH CASE, PRESENTS A NUMBER OF UNUSUAL FACTORS WHICH MUST BE TAKEN INTO CONSIDERATION BEFORE ARRIVING AT ANY FINAL DECISION.

4. A SIGNED DOCUMENT PURPORTING TO BE A COLLECTIVE AGREEMENT BETWEEN THE ATLANTIC PACKAGING COMPANY EMPLOYEES' ASSOCIATION AND THE RESPONDENT WAS FILED WITH THE BOARD BY THE RESPONDENT. THIS SIGNED AGREEMENT IN WRITING BETWEEN THESE TWO PARTIES WAS IN OPERATION FROM OCTOBER 15, 1968 TO OCTOBER 15, 1969. A RENEWAL OF THIS AGREEMENT SIGNED BY THE PARTIES INCLUDED INTER ALIA AMENDMENTS TO THE PROVISIONS OF THE PREVIOUS AGREEMENT RELATING TO OVERTIME HOURS OF WORK, CALL-IN PAY, PAID BEREAVEMENT LEAVE, SHIFT DIFFERENTIALS AND WAGE INCREASES OF 5% EFFECTIVE OCTOBER 20, 1969 TO OCTOBER 16, 1970 AND A FURTHER WAGE INCREASE OF 5% BASED ON THE 1968 WAGE SCALE TO BE EFFECTIVE FROM OCTOBER 18, 1970 TO OCTOBER 15, 1971.

5. COUNSEL FOR THE APPLICANT ADMITTED HE KNEW OF THE EXISTENCE OF THIS AGREEMENT. MOREOVER, ALTHOUGH THE MEETING OF THE EMPLOYEES' ASSOCIATION WAS HELD IN APRIL, 1971, COUNSEL ADVISED THE APPLICANT TO WITHHOLD MAKING AN APPLICATION FOR CERTIFICATION UNTIL THE LAST TWO MONTHS THE AGREEMENT WAS TO OPERATE. SURELY THIS IS RECOGNITION OF THE EXISTENCE OF THE AGREEMENT AS WELL AS THE ESTABLISHED BARGAINING RELATIONSHIP BETWEEN THE SAID ASSOCIATION AND THE RESPONDENT.

6. THERE IS NOT A SHRED OF EVIDENCE BEFORE THE BOARD THAT THE EMPLOYEES' ASSOCIATION HAS BEEN DISSOLVED. IN FACT, MR. R. ROWSELL, WHO GAVE EVIDENCE AT THE HEARING, STATED UNDER OATH THAT HE IS VICE-PRESIDENT OF THE EMPLOYEES' ASSOCIATION AND ALSO PRESIDENT OF THE APPLICANT UNION, LOCAL 894. THE SAME SITUATION EXISTED IN THE PETERBOROUGH CASE WHERE AN EMPLOYEE GAVE EVIDENCE ON BEHALF OF THE APPLICANT UNION IN THAT CASE AND STATED THAT HE STILL HELD THE OFFICE OF PRESIDENT OF THE PETERBOROUGH BOARD OF EDUCATION CARE-TAKERS' AND MAINTENANCE ASSOCIATION.

7. HAVING REGARD TO ALL THE ABOVE CIRCUMSTANCES INCLUDING THE FACT THAT 27 OF THE 36 MEMBERSHIP CARDS FILED BY THE APPLICANT WERE SIGNED BY THE EMPLOYEES CONCERNED OVER THREE MONTHS PRIOR TO THE DATE OF THE MAKING OF THIS APPLICATION, I WOULD HAVE FOLLOWED THE PROCEDURE ADOPTED BY THE BOARD IN THE PETERBOROUGH CASE BY EXERCISING THE DISCRETION GIVEN THE BOARD UNDER SECTION 7(2) OF THE ACT AND DIRECTING A REPRESENTATION VOTE. THE VOTERS WOULD BE ASKED IF THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT UNION.

CASE LISTINGS OCTOBER 1971

	PAGE
1. CERTIFICATION	
(A) BARGAINING AGENTS CERTIFIED	228
(B) APPLICATIONS DISMISSED	239
(C) APPLICATIONS WITHDRAWN	245
2. APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS	247
3. APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL	248
4. APPLICATIONS FOR CONSENT TO PROSECUTE	248
5. COMPLAINTS UNDER SECTION 79 (FORMERLY S. S. 65) (UNFAIR LABOUR PRACTICE)	248
6. APPLICANTS UNDER SECTION 55 (FORMERLY S. 47A)	250
7. JURISDICTIONAL DISPUTES	251
8. APPLICATION FOR DETERMINATION UNDER SECTION 95(2) (FORMERLY S. 79(2))	251
9. APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION	251

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING OCTOBER 1971

BARGAINING AGENTS CERTIFIED DURING OCTOBER

NO VOTE CONDUCTED

18983-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CHILDREN'S AID SOCIETY OF HURON COUNTY (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT SOCIAL WORKERS, CO-ORDINATORS, SECRETARY TO THE DIRECTOR, THE DIRECTOR, PERSONS ABOVE THE RANK OF DIRECTOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (3 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL SOCIAL WORKERS AND CO-ORDINATORS IN THE EMPLOY OF THE RESPONDENT, SAVE AND EXCEPT THE DIRECTOR AND PERSONS ABOVE THE RANK OF DIRECTOR." (7 EMPLOYEES IN THE UNIT).

(SEE DECISION [1971] OLRB REP. 632).

315-71-R: INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA (APPLICANT) V. GENERAL MOTORS OF CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL SECURITY GUARDS PROTECTING THE PROPERTY OF THE RESPONDENT AT PLANT No. 2 ON GLENDALE AVENUE IN ST. CATHARINES, SAVE AND EXCEPT SERGEANTS, PERSONS ABOVE THE RANK OF SERGEANT, RECEPTIONISTS, CHAUFFEURS, AND STUDENTS EMPLOYED AS SECURITY GUARDS DURING THE SCHOOL VACATION PERIOD." (30 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENTS AND THE REPRESENTATIONS OF THE PARTIES).

549-71-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. LELY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BURLINGTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PROFESSIONAL ENGINEERS, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND STUDENTS EMPLOYED ON A CO-OPERATIVE TRAINING PROGRAM WITH A UNIVERSITY." (23 EMPLOYEES IN THE UNIT).

867-71-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL

BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. HUMPTY DUMPTY FOODS LIMITED (RESPONDENT).

UNIT: "ALL DRIVER-SALESMEN OF THE RESPONDENT AT THE TOWN OF MISSISSAUGA, SAVE AND EXCEPT SUPERVISOR, PERSONS ABOVE THE RANK OF SUPERVISOR AND OFFICE STAFF." (4 EMPLOYEES IN THE UNIT).

868-71-R: UNITED PAPERMAKERS AND PAPERWORKERS AFL-CIO, CLC, LOCAL 894 (APPLICANT) V. ATLANTIC PACKAGING COMPANY (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS PAPER MILL OPERATIONS AT SCARBOROUGH, SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, OFFICE STAFF, TESTERS AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT ENTERED INTO ON JULY 1, 1971, BETWEEN THE RESPONDENT AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796." (47 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE DECISION [1971] OLRB REP. 690).

885-71-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. THE HOOVER COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT SERVICE SUPERVISOR AND PERSONS ABOVE THE RANK OF SERVICE SUPERVISOR, OFFICE AND SALES STAFF." (5 EMPLOYEES IN THE UNIT).

894-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE NORTH BAY COMMUNITY MEMORIAL BUILDING COMMITTEE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NORTH BAY, SAVE AND EXCEPT ASSISTANT ARENA MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT ARENA MANAGER, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (8 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE BUILDING SUPERINTENDENT IS NOT INCLUDED IN THE BARGAINING UNIT).

935-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. QUEBEC ENGINEERING LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLEN-GARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

945-71-R: CANADIAN TANK LINES UNION (APPLICANT) V. MUNICIPAL TANK LINES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ONTARIO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DISPATCHERS, OFFICE AND SALES STAFF AND SECURITY PERSONNEL." (61 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT CONTRACTORS ARE NOT INCLUDED IN THE BARGAINING UNIT).

947-71-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. WELLS FARGO ARMOURD EXPRESS, LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (10 EMPLOYEES IN THE UNIT).

(SEE DECISION [1971] OLRB REP. 632).

960-71-R: SAULT STE MARIE TYPOGRAPHICAL UNION, LOCAL 746 OF THE INTERNATIONAL TYPOGRAPHICAL UNION (APPLICANT) V. SAULT STAR LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE, SAVE AND EXCEPT THOSE EMPLOYEES COVERED BY THE SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE APPLICANT AND THE RESPONDENT AND INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS' UNION OF NORTH AMERICA, LOCAL 436, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (7 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE CHIEF PHOTOGRAPHER AND THE ASSISTANT CHIEF PHOTOGRAPHER ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT).

983-71-R: CANADIAN FOOD & ALLIED WORKERS LOCAL UNION 175 CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. INTERCITY FOOD SERVICES INC. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RESTAURANTS AT DUNDAS, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER." (5 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

994-71-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION (APPLICANT) V. TIMMINS BOARD OF EDUCATION (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT IN THE TOWN OF TIMMINS AND THE TOWNSHIPS OF TISDALE, WHITNEY AND MOUNTJOY, SAVE AND EXCEPT EXECUTIVE ASSISTANT TO THE DIRECTOR AND PERSONS ABOVE THE RANK OF EXECUTIVE ASSISTANT TO THE DIRECTOR." (31 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE SECRETARY TO THE DIRECTOR AND THE SECRETARY TO THE PURCHASING AGENT ARE NOT INCLUDED IN THE BARGAINING UNIT).

1000-71-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. CANADA SAFEWAY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES IN THE COUNTY OF HALTON, SAVE AND EXCEPT MEAT MANAGER, ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (24 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1001-71-R: SERVICE EMPLOYEES UNION, LOCAL 210, AFL-CIO-CLC (APPLICANT) V. TECUMSEH NURSING HOME (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT REGISTERED NURSES, GRADUATE NURSES, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND OFFICE STAFF." (56 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1003-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. ALPINE PAVING CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WELLINGTON ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

1008-71-R: BRICKLAYERS, MASONS & PLASTERERS INTERNATIONAL UNION OF AMERICA, LOCAL 13 (APPLICANT) V. J. R. COUTURE LIMITED (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

1014-71-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 759 (APPLICANT) V. DOMINION BRIDGE COMPANY LIMITED ONTARIO BRANCH (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (23 EMPLOYEES IN THE UNIT).

1021-71-R: BRICKLAYERS, MASONS & PLASTERERS, INTERNATIONAL UNION OF AMERICA, LOCAL #4 (APPLICANT) V. STAR MASONRY (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

1022-71-R: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. VERSASERVICES LIMITED DIVISION OF VERSAFOOD SERVICES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE ONTARIO CRIPPLED CHILDREN'S CENTRE AT METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISOR, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (11 EMPLOYEES IN THE UNIT).

1028-71-R: THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF MUSKOKA LAKES (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (29 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PERSONS CLASSIFIED BY THE RESPONDENT AS BUILDING INSPECTORS AND BY-LAW ENFORCEMENT OFFICERS ARE EXCLUDED FROM THE BARGAINING UNIT UNDER THE CLASSIFICATION OF OFFICE STAFF).

1033-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. DINEEN CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

1035-71-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, U.A.W. (APPLICANT) V.

KOHEN BOX COMPANY (WINDSOR) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (23 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1036-71-R: BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA, LOCAL UNION No. 7 (APPLICANT) V. JOE PANTALONE MASONRY LIMITED (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

1038-71-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION #1071 (APPLICANT) V. CROMWELL CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF HOPE IN THE COUNTY OF DURHAM AND THE TOWNSHIPS OF SOUTH MONAGHAN, HAMILTON, HALDIMAND AND ALNWICK IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

1044-71-R: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL No. 597 (APPLICANT) V. CROMWELL CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF HOPE IN THE COUNTY OF DURHAM AND THE TOWNSHIPS OF SOUTH MONAGHAN, HAMILTON, HALDIMAND AND ALNWICK IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

1047-71-R: TEAMSTERS LOCAL UNION No. 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. SEAWAY NEWS COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ST. CATHARINES, SAVE AND EXCEPT SUPERVISORS, FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF SUPERVISOR, FOREMAN AND FORELADY, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (16 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1059-71-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION #249 (APPLICANT) V. RULIFF-GRASS CONSTRUCTION CO. LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

1065-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1190 (APPLICANT) V. JOE BANCHERI CARPENTERS (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

1067-71-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL NO. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. HARROW MASONRY (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

1068-71-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. BIRCHWOOD BUILDERS LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

1069-71-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA AFL-CIO-CLC (APPLICANT) V. TERMINAL BEEF COMPANY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT 2255 ST. CLAIR AVENUE WEST, TORONTO, SAVE AND EXCEPT OFFICE AND SALES STAFF, FOREMEN, FORELADY, AND ALL THOSE ABOVE THE RANK OF FOREMAN AND FORELADY,

AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (21 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1077-71-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. DOMINION COLOUR CORPORATION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT AJAX, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND CLERICAL STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS INCLUDED IN THE BARGAINING UNIT AS DEFINED IN THE CERTIFICATE OF THE BOARD DATED JULY 26, 1971 (FILE NO. 547-71-R)". (2 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1078-71-R: THE CANADIAN TRANSPORTATION WORKERS UNION #200 NATIONAL COUNCIL OF CANADIAN LABOUR (APPLICANT) V. PAXTON TRANSPORT LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF PETERBOROUGH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, DISPATCHERS, AND PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (13 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1083-71-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. DOMINION COLOUR CORPORATION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE, CLERICAL AND SALES STAFF, LABORATORY TECHNICIANS AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (35 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1109-71-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 759 (APPLICANT) V. PERMA STRUCTURES (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

1124-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. HUGH MATERN CONTRACTING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF PETER-

BOROUGH, VICTORIA AND THE PROVISIONAL COUNTY OF HALIBURTON ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

APPLICATIONS CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

437-71-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. COM-MODORE MOBILE HOMES, LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS MOBILE HOME MANUFACTURING FACILITY LOCATED IN PRESTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE, CLERICAL AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (73 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		88
NUMBER OF PERSONS WHO CAST BALLOTS	88	
NUMBER OF BALLOTS EXCLUDING SEGREGATED BALLOTS CAST BY PERSONS WHOSE NAMES APPEAR ON VOTERS' LIST	66	
NUMBER OF SEGREGATED BALLOTS CAST BY PERSONS WHOSE NAMES APPEAR ON VOTERS' LIST	22	

BALLOT BOX SEALED

767-71-R: LOCAL UNION 2679, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. SUCCESS DISPLAY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (31 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		33
NUMBER OF PERSONS WHO CAST BALLOTS	34	
NUMBER OF SEGREGATED BALLOTS CASTS BY PERSONS WHOSE NAMES APPEAR ON VOTERS' LIST	1	
NUMBER OF SEGREGATED BALLOTS CAST BY PERSONS WHOSE NAMES DO NOT APPEAR ON VOTERS' LIST	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	17	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	15	

(SEE DECISION [1971] OLRB REP. 636).

1032-71-R: TEXTILE WORKERS UNION OF AMERICA, AFL-CIO-CLC (APPLICANT) V. NATIONAL KNITTING MILLS CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, HOME WORKERS, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (305 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		305
NUMBER OF PERSONS WHO CAST BALLOTS	283	
BALLOTS SEGREGATED AND NOT COUNTED	3	
NUMBER OF SPOILED BALLOTS	4	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	194	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	82	

APPLICATIONS CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

411-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE LINCOLN COUNTY BOARD OF EDUCATION (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF LINCOLN AND IN THE ADMINISTRATION OFFICES AND ANNEXES IN THE REGIONAL MUNICIPALITY OF NIAGARA, SAVE AND EXCEPT DEPARTMENT HEADS, PERSONS ABOVE THE RANK OF DEPARTMENT HEAD, FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION

PERIOD, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 152 AND THE RESPONDENT." (237 EMPLOYEES IN THE UNIT). (THE BOARD FURTHER STATED IN ITS DECISION DATED JULY 5TH, 1971: PARAGRAPH 3: THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT ALL EMPLOYEES IN THE PERSONNEL DEPARTMENT ARE EXCLUDED FROM THE BARGAINING UNIT. PARAGRAPH 4: THE BOARD FURTHER NOTES THAT BY AN AGREEMENT DATED JUNE 28, 1971 THE PARTIES HAVE AGREED THAT THE FOLLOWING PERSONS BE EXCLUDED FROM THE BARGAINING UNIT ON THE GROUNDS THAT THEY EXERCISE MANAGERIAL FUNCTIONS OR ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTER RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(b) OF THE LABOUR RELATIONS ACT:).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		192
NUMBER OF PERSONS WHO CAST BALLOTS		180
BALLOTS SEGREGATED AND NOT COUNTED	5	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	89	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	86	

718-71-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. RALPH MILROD METAL PRODUCTS LIMITED (RESPONDENT) V. RALPH MILROD METAL PRODUCTS EMPLOYEES' ASSOCIATION (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MISSISSAUGA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (138 EMPLOYEES IN THE UNIT). (THE BOARD FURTHER STATED IN ITS DECISION DATED SEPTEMBER 13TH, 1971: PARAGRAPH 4: "FOR THE PURPOSE OF CLARITY THE BOARD NOTES THAT THE DRAFTSMEN EMPLOYED IN THE ENGINEERING DEPARTMENT ARE NOT INCLUDED IN THE BARGAINING UNIT").

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		138
NUMBER OF PERSONS WHO CAST BALLOTS		130
NUMBER OF SPOILED BALLOTS	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	93	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	35	

833-71-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW (APPLICANT) V. CHRYSLER CANADA LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS OFFICES AT WINDSOR EMPLOYED IN THE FOLLOWING ENGINEERING AND TECHNICAL CLASSIFICATIONS: TOOL ENGINEER "A", SENIOR TOOL ENGINEER, PLANT ENGINEER "A", SENIOR PLANT ENGINEER, MATERIAL HANDLING ENGINEER, DRAFTSMAN - TOOL & PLANT ENGINEERING, TOOL ENGINEER "B", TOOL & DIE DESIGNER "A", TROUBLE MAN TOOL ENGINEERING "B", AND TROUBLE MAN TOOL ENGINEERING "A". (64 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	62
NUMBER OF PERSONS WHO CAST BALLOTS	58
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	42
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	16

APPLICATIONS FOR CERTIFICATION DISMISSED DURING OCTOBER

NO VOTE CONDUCTED

396-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 1669 (APPLICANT) V. ALCAN BUILDING PRODUCTS LIMITED (RESPONDENT). (3 EMPLOYEES).

(SEE DECISION [1971] OLRB REP. 670).

489-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. COMMODORE MOBILE HOMES LIMITED (RESPONDENT) V. INTERNATIONAL WOODWORKERS OF AMERICA (INTERVENER). (NO EMPLOYEES).

561-71-R: THE ONTARIO ERECTORS ASSOCIATION (APPLICANT) V. THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (RESPONDENT) V. ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION (INTERVENER #1) V. METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION (INTERVENER #2) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 506 (INTERVENER #3) V. ONTARIO COUNCIL OF THE NATIONAL HOUSE BUILDERS ASSOCIATION (INTERVENER #4) V. HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (INTERVENER #5) V. ERECTORS DIVISION, ONTARIO PRECAST CONCRETE MANUFACTURERS' ASSOCIATION (INTERVENER #6) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATED LOCALS (INTERVENER #7). (NO EMPLOYEES).

684-71-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. RICHARD NADEAU (RESPONDENT). (NO EMPLOYEES).

762-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. GEORGE AND ASMUSSEN LIMITED (RESPONDENT). (2 EMPLOYEES).

(SEE DECISION [1971] OLRB REP. 683).

814-71-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. CANADIAN PITTSBURGH INDUSTRIES LIMITED (RESPONDENT). (3 EMPLOYEES).

866-71-R: INTERNATIONAL ALLIANCE THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA LOCAL 58, TORONTO (APPLICANT) V. VICTOR PRODUCTIONS LIMITED AND CO. (RESPONDENT). (2 EMPLOYEES).

(SEE DECISION [1971] OLRB REP. 685).

876-71-R: INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, LOCAL NUMBER 58, TORONTO (APPLICANT) V. THE ST. LAWRENCE CENTRE FOR THE ARTS, OPERATED BY THE TORONTO ARTS FOUNDATION (RESPONDENT). (4 EMPLOYEES).

941-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. QUEBEC ENGINEERING LTD. (RESPONDENT). (24 EMPLOYEES).

956-71-R: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION NO. 597 (APPLICANT) V. IVEY DREGER CONSTRUCTION LIMITED (RESPONDENT). (NO EMPLOYEES).

967-71-R: METRO DENTAL LABORATORY LTD. (APPLICANT) V. JEWELRY WORKER'S 43 - TORONTO (RESPONDENT). (10 EMPLOYEES).

982-71-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. INTERCITY FOOD SERVICES INC. (RESPONDENT). (5 EMPLOYEES).

985-71-R: THE PRESCOTT AND RUSSELL PRINTING LIMITED EMPLOYEES' ASSOCIATION (APPLICANT) V. PRESCOTT AND RUSSELL PRINTING LIMITED (RESPONDENT). (18 EMPLOYEES).

990-71-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. J. W. CROOKS COMPANY, LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (81 EMPLOYEES).

1004-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. JIM'S CONSTRUCTION (RESPONDENT). (2 EMPLOYEES).

1007-71-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. HANFORD LUMBER LIMITED (RESPONDENT). (41 EMPLOYEES).

1015-71-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 759 (APPLICANT) V. KAWNEER INSTALLATIONS LIMITED (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

(SEE DECISION [1971] OLRB REP. 674).

1016-71-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 759 (APPLICANT) V. BAERT CONSTRUCTION LIMITED (RESPONDENT). (2 EMPLOYEES).

1020-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1190 (APPLICANT) V. TONI ROSSETTI CARPENTERS (RESPONDENT) V. EMPLOYEE (OBJECTOR). (2 EMPLOYEES).

1024-71-R: DUFFERIN-PEEL SEPARATE SCHOOL BOARD CARETAKERS AND MAINTENANCE ASSOCIATION (APPLICANT) V. DUFFERIN-PEEL COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD (RESPONDENT). (48 EMPLOYEES).

(SEE DECISION [1971] OLRB REP. 680).

1025-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2466 (APPLICANT) V. SANROD CONSTRUCTION LTD. (RESPONDENT). (2 EMPLOYEES).

1072-71-R: INTERNATIONAL SILVER EMPLOYEES ASSOCIATION (APPLICANT) V. THE INTERNATIONAL SILVER COMPANY OF CANADA LIMITED (RESPONDENT). (85 EMPLOYEES).

1108-71-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS UNION LOCAL 786 (APPLICANT) V. NORRIS IRON WORKS LIMITED (RESPONDENT). (2 EMPLOYEES).

1117-71-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 759 (APPLICANT) V. GABCO LIMITED (RESPONDENT). (2 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

893-71-R: BOOT AND SHOE WORKERS' UNION, CLC, AFL-CIO (APPLICANT) V. JUNIOR FOOTWEAR LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT MARKDALE, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (131 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		133
NUMBER OF PERSONS WHO CAST BALLOTS	127	
BALLOTS SEGREGATED AND NOT COUNTED	2	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	41	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	84	

1031-71-R: TEXTILE WORKERS UNION OF AMERICA, AFL-CIO-CLC (APPLICANT)
V. BRADFORD SPINNERS LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, THOSE ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, HOME WORKERS, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (27 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		27
NUMBER OF PERSONS WHO CAST BALLOTS	26	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	13	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	13	

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

717-71-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION (APPLICANT) V. CO-OPERATORS INSURANCE ASSOCIATION OF GUELPH (RESPONDENT)
V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT ITS TORONTO DIVISION, SAVE AND EXCEPT ASSISTANT SUPERVISORS, ADMINISTRATIVE ASSISTANTS, PERSONS ABOVE THE RANK OF ASSISTANT SUPERVISOR OR ADMINISTRATIVE ASSISTANT, EMPLOYEES IN THE PERSONNEL DEPARTMENT, CONFIDENTIAL SECRETARIES, OUTSIDE SALES REPRESENTATIVES AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (104 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		104
NUMBER OF PERSONS WHO CAST BALLOTS	103	
NUMBER OF SEGREGATED BALLOTS CAST BY PERSONS WHOSE NAMES DO NOT APPEAR ON VOTERS' LIST	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	47	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	55	

794-71-R: SERVICE EMPLOYEES UNION, LOCAL 204 AFL-CIO-CLC (APPLICANT) V. ORILLIA AMBULANCE SERVICE LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ORILLIA, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND OFFICE STAFF." (12 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		8
NUMBER OF PERSONS WHO CAST BALLOTS	8	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	4	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	4	

812-71-R: TEAMSTERS LOCAL UNION 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. CORNELL CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		5
NUMBER OF PERSONS WHO CAST BALLOTS	5	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	1	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	4	

816-71-R: CANADIAN MERCHANDISING EMPLOYEES' UNION (APPLICANT) V. JOFFRE LAPOINTE & SONS LIMITED (RESPONDENT) V. RETAIL CLERKS UNION, LOCAL 486 (INTERVENER).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT HAWKESBURY WHO ARE REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT OWNER MANAGER AND MEMBERS OF THE IMMEDIATE FAMILY OF THE OWNER MANAGER." (7 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		3
NUMBER OF PERSONS WHO CAST BALLOTS	3	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	0	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF INTERVENER	3	

822-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THAMES VALLEY AMBULANCE LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, ONTARIO, SAVE AND EXCEPT SUPERVISORS, ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF SUPERVISOR OR ASSISTANT MANAGER AND OFFICE STAFF." (37 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		33
NUMBER OF PERSONS WHO CAST BALLOTS	23	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	3	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	20	

852-71-R: THE INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES - LOCAL UNION 1783 (APPLICANT) V. FANSHAWE PAINTING LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL PAINTERS AND PAINTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		8
NUMBER OF PERSONS WHO CAST BALLOTS	8	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	1	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	7	

860-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1190 (APPLICANT) V. J. KORNUTA CARPENTRY (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		9
NUMBER OF PERSONS WHO CAST BALLOTS		9
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	1	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	8	

920-71-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. HALTON COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERVISORS AND FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR AND FOREMAN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (27 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		28
NUMBER OF PERSONS WHO CAST BALLOTS		28
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	9	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	19	

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING OCTOBER

961-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. EAST YORK PUBLIC LIBRARY BOARD (RESPONDENT). (68 EMPLOYEES).

968-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. C. A. PITTS, GENERAL CONTRACTOR LTD. 30 COMMERCIAL ROAD, TORONTO 17, ONT. (RESPONDENT). (4 EMPLOYEES).

986-71-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION NO. 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. GEORGE LANTHIER & FILS LIMITED (RESPONDENT). (4 EMPLOYEES).

998-71-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. TORONTO GENERAL HOSPITAL (RESPONDENT). (57 EMPLOYEES).

999-71-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. INTERCITY FOOD SERVICES INC. (RESPONDENT). (8 EMPLOYEES).

1011-71-R: GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. BUCKLEY CARTAGE LIMITED (RESPONDENT). (32 EMPLOYEES).

1037-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION #1071 (APPLICANT) V. IVEY-DREGER CONSTRUCTION LIMITED (RESPONDENT). (NO EMPLOYEES).

1053-71-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES & CANADA LOCAL 124, OTTAWA - HULL (APPLICANT) V. SIPOREX DIVISION OF DOMTAR CONSTRUCTION MATERIALS LTD. (RESPONDENT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL ON ITS OWN BEHALF AND BY AND ON BEHALF OF LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527, AND LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (INTERVENER). (3 EMPLOYEES).

1063-71-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, (APPLICANT) V. CLAIRSON CONSTRUCTION COMPANY LIMITED (RESPONDENT) V. ENGINEERING CONSTRUCTORS ASSOCIATION (FORMERLY CLAIRSON EMPLOYEES ASSOCIATION) (INTERVENER). (22 EMPLOYEES).

1064-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. SANDRIN PRECAST LIMITED (RESPONDENT). (2 EMPLOYEES).

1089-71-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 759 (APPLICANT) V. BAERT CONSTRUCTION LIMITED (RESPONDENT). (2 EMPLOYEES).

1090-71-R: CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 175, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. BUSY "B" DISCOUNT FOODS LIMITED (RESPONDENT). (2 EMPLOYEES).

1091-71-R: CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 175, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. LOBLAW GROCETERIAS CO. LIMITED (RESPONDENT) V. RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, A.F.L.-C.I.O., C.L.C. LOCAL 579 (INTERVENER). (7 EMPLOYEES).

1101-71-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. HARVEY L. JAMES CARTAGE (KING CARTAGE) (RESPONDENT). (5 EMPLOYEES).

1110-71-R: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION NO. 597 (APPLICANT) V. STEWART & HINAN CONSTRUCTION LIMITED (RESPONDENT). (8 EMPLOYEES).

1133-71-R: GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. LOCAL LINES LTD. (RESPONDENT). (26 EMPLOYEES).

1134-71-R: GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. LAURENTIAN TRANSIT LTD. (RESPONDENT). (36 EMPLOYEES).

1156-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA GRAND RIVER DISTRICT COUNCIL ON BEHALF OF LOCALS 498, 949, 1940 & 2173 (APPLICANT) V. PROPERTY MAINTENANCE (RESPONDENT). (2 EMPLOYEES).

1164-71-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES & CANADA LOCAL 124, OTTAWA-HULL (APPLICANT) V. CANADIAN JOHNS MANVILLE CO. LTD. (RESPONDENT). (3 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED

OF DURING OCTOBER

943-71-R: JOHN W. F. OSBORNE (APPLICANT) V. INTERNATIONAL BROTHERHOOD OF BOOKBINDERS LOCAL 28 (RESPONDENT). (53 EMPLOYEES). (DISMISSED).

1017-71-R: KENNETH NOLAN AND SHERMAN GILLIAM (APPLICANTS) V. CANADIAN UNION OF OPERATING ENGINEERS (RESPONDENT) V. HOOKER CHEMICAL (NAINIMO) LIMITED (INTERVENER). (2 EMPLOYEES). (DISMISSED).

1055-71-R: RELIANCE ELECTRIC LIMITED (APPLICANT) V. UNITED STEELWORKERS OF AMERICA (RESPONDENT). (9 EMPLOYEES). (GRANTED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURINGOCTOBER

1076-71-U: LIVINGSTON TRANSPORTATION LIMITED (APPLICANT) V. THOSE PERSONS NAMED IN SCHEDULE "A" ATTACHED HERETO (RESPONDENTS). (WITHDRAWN).

1086-71-U: SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL 392 (APPLICANT) V. RONALD WILSON (RESPONDENT). (GRANTED).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING OCTOBER

781-71-U: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. MARSLAND ENGINEERING LIMITED (RESPONDENT). (WITHDRAWN).

891-71-U: THE BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA (APPLICANT) V. A. G. & SON CONTRACTORS AND RALPH GORGI (RESPONDENTS). (GRANTED).

897-71-U: FRANK TAGGART & SON LTD. (APPLICANT) V. SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION LOCAL UNION 537, BRANTFORD BRANCH, PERCY ROBERTS AND CHARLES LANDER (RESPONDENT). (WITHDRAWN).

909-71-U: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. O'CONNOR TANKS LIMITED (RESPONDENT). (GRANTED).

980-71-U: ROBSON-LANG LEATHERS LIMITED (APPLICANT) V. GERALD BOUCHIE, LEOPOLD DUGUAY ET AL (RESPONDENTS). (WITHDRAWN).

1087-71-U: SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL 392 (APPLICANT) V. WILSON-ANDERSON LIMITED AND RONALD WILSON (RESPONDENTS). (WITHDRAWN).

COMPLAINTS UNDER SECTION 79 (FORMERLY S. 65) (UNFAIR LABOUR PRACTICE)DISPOSED OF DURING OCTOBER

341-71-U: LOCAL 1966, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A.F.L. - C.I.O. & C.L.C. (COMPLAINANT) V. JOHNSON CONTROLS LIMITED (RESPONDENT). (GRANTED).

(SEE DECISION [1971] OLRB REP. 643).

797-71-U: CANADIAN TEXTILE AND CHEMICAL UNION (COMPLAINANT) V. TEX-PACK LIMITED (RESPONDENT). (WITHDRAWN).

827-71-U: SERVICE EMPLOYEES INTERNATIONAL UNION (COMPLAINANT) V. ROCKCLIFFE NURSING HOMES (RESPONDENT). (WITHDRAWN).

841-71-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. GIDON INDUSTRIES LIMITED (RESPONDENT). (WITHDRAWN).

842-71-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. TIMMINS AMBULANCE SERVICE (RESPONDENT). (WITHDRAWN).

845-71-U: BEN COFFEY (COMPLAINANT) V. HAROLD BOWEN, D. E. MOORE, P. E. GREEN & GRANT BRUCE (RESPONDENTS). (WITHDRAWN).

848-71-U: HOTELS, CLUBS, RESTAURANT, TAVERN EMPLOYEES UNION LOCAL 261 OTTAWA, ONTARIO (COMPLAINANT) V. COMMONWEALTH HOLIDAY INNS OF CANADA LIMITED (OTTAWA) (RESPONDENT). (WITHDRAWN).

865-71-U: NIKOLA HALAR (2ND SHOP STEWARD) (COMPLAINANT) V. GORD McKELLER & SHEET-METAL WORKERS LOCAL #540 (RESPONDENTS) V. THOMAS MARK (INTERVENER). (DISMISSED).

(SEE DECISION [1971] OLRB REP. 664).

890-71-U: CANADIAN TEXTILE AND CHEMICAL UNION (COMPLAINANT) V. TEX-PACK LIMITED (RESPONDENT). (WITHDRAWN).

892-71-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. GIDON INDUSTRIES LIMITED (RESPONDENT). (WITHDRAWN).

899-71-U: SERVICE EMPLOYEES' INTERNATIONAL UNION LOCAL 183 (COMPLAINANT) V. BEACON HILL LODGES OF CANADA LTD. (RESPONDENT). (WITHDRAWN).

910-71-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. GIDON INDUSTRIES LIMITED (RESPONDENT). (WITHDRAWN).

939-71-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO: CLC (COMPLAINANT) V. MILL FARMS PRODUCE LTD. (RESPONDENT). (GRANTED).

953-71-U: GEORGE C. BAIRD (COMPLAINANT) V. LOCAL 647, INTERNATIONAL BROTHERHOOD OF TEAMSTERS (RESPONDENT). (WITHDRAWN).

1018-71-U: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (COMPLAINANT) V. RIGO FORMING LIMITED (RESPONDENT). (WITHDRAWN).

1042-71-U: HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION, LOCAL 261, - A.F.L. - C.I.O. - C.L.C. - 1091 WELLINGTON ST. OTTAWA, ONTARIO (COMPLAINANT) V. OTTAWA CIVIL SERVICE RECREATIONAL ASSOCIATION (RESPONDENT). (WITHDRAWN).

1060-71-U: HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION, LOCAL 261, - A.F.L. - C.I.O. - C.L.C. - 1091 WELLINGTON ST. OTTAWA, ONTARIO (COMPLAINANT) V. OTTAWA CIVIL SERVICE RECREATIONAL ASSOCIATION (RESPONDENT). (WITHDRAWN).

1107-71-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. GIDON INDUSTRIES LIMITED (RESPONDENT). (WITHDRAWN).

APPLICATIONS UNDER SECTION 55 (FORMERLY S. 47A) DISPOSED OF DURING

OCTOBER

18974-70-R: NURSES' ASSOCIATION MIDDLESEX-LONDON DISTRICT HEALTH UNIT (APPLICANT) V. MIDDLESEX-LONDON DISTRICT HEALTH UNIT (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL UNION 101 (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

VOTING CONSTITUENCY: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT AT THE CITY OF LONDON AND IN THE COUNTY OF MIDDLESEX, SAVE AND EXCEPT SUPERVISORS AND THOSE ABOVE THE RANK OF SUPERVISOR."

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	44
NUMBER OF PERSONS WHO CAST BALLOTS	42
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	29
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	13

785-71-R: INTERNATIONAL BROTHERHOOD OF BOOKBINDERS, LOCAL #28 (APPLICANT) V. MACKINNON & MONCUR LIMITED (RESPONDENT). (GRANTED).

942-71-R: INTERNATIONAL MOLDERS' AND ALLIED WORKERS' UNION, LOCAL 246 (APPLICANT) V. EATON YALE LTD. (RESPONDENT) V. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA AND ITS LOCAL 535 (INTERVENER). (GRANTED).

(SEE DECISION [1971] OLRB REP. 667).

JURISDICTIONAL DISPUTES

1142-71-JD: LEADER MASONRY & FORMING LIMITED (COMPLAINANT) V. LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837, UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 18, THE FRID CONSTRUCTION COMPANY LIMITED (RESPONDENTS).

(SEE DECISION [1971] OLRB REP. 678).

1149-71-JD: LONG BRANCH WINDOW AND METAL CLEANING LIMITED (COMPLAINANT) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 721 AND LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (RESPONDENTS).

(SEE DECISION [1971] OLRB REP. 679).

APPLICATION FOR DETERMINATION UNDER SECTION 95(2) (FORMERLY S. 79(2))

DISPOSED OF DURING OCTOBER

783-71-M: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. FORD MOTOR COMPANY OF CANADA, LIMITED (RESPONDENT).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

340-71-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION NO. 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. SWISS CHALET BAR B-Q A DIVISION OF HARVEY'S FOODS LIMITED (RESPONDENT). (REQUEST DENIED).

472-71-R: CARPENTERS LOCAL 249 KINGSTON ONT. (APPLICANT) V. ACME LATHING COMPANY LIMITED (RESPONDENT) V. WOOD, WIRE & METAL LATHERS INTERNATIONAL UNION LOCAL 562 (INTERVENER). (REQUEST DENIED).

689-71-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. ZEHR MARKETS LIMITED (RESPONDENT). (REQUEST DENIED).

815-71-R: CANADIAN MERCHANDISING EMPLOYEES' UNION (APPLICANT) V. JOFFR LAPOINTE & SONS LIMITED (RESPONDENT) V. RETAIL CLERKS UNION, LOCAL 486 (INTERVENER). (REQUEST DENIED).

(SEE DECISION [1971] OLRB REP. 629).

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054



ONTARIO

Monthly Report

ONTARIO LABOUR RELATIONS BOARD

ONTARIO LABOUR RELATIONS BOARD REPORTS

A MONTHLY SERIES OF DECISIONS FROM THE

ONTARIO LABOUR RELATIONS BOARD

CITED [1971] OLRB REP.

ACCREDITATION - APPROPRIATE UNIT OF EMPLOYERS - EMPLOYEES ENGAGED IN OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT - WHETHER BOARD MAY MAKE EXCEPTIONS - PRACTICE.

THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION v. THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION #793 v. THE ONTARIO ERECTORS ASSOCIATION v. THE METROPOLITAN TORONTO SEWER AND WATERMAIN CONTRACTORS ASSOCIATION v. ONTARIO ROAD BUILDERS ASSOCIATION v. THE METROPOLITAN TORONTO ROAD BUILDERS' ASSOCIATION v. HEAVY CONSTRUCTION ASSOCIATION OF TORONTO

755

ACCREDITATION - WHETHER PROPER EMPLOYER ORGANIZATION - WHETHER ORGANIZATION HAS SUFFICIENT AUTHORITY TO DISCHARGE RESPONSIBILITIES - APPROPRIATE UNIT OF EMPLOYERS - EMPLOYER REFUSING TO MAKE FILINGS WITH BOARD - WHETHER INCLUDED IN UNIT - BASIS FOR REMOVING CERTAIN COMPANIES - UNION NOT ENTITLED TO BARGAIN ON THEIR BEHALF - WHETHER EMPLOYER EMPLOYS A MAJORITY OF EMPLOYEES.

THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION v. THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION NUMBER 721 v. THE ONTARIO ERECTORS ASSOCIATION v. HEAVY CONSTRUCTION ASSOCIATION OF TORONTO

719

BARGAINING UNIT - CONSTRUCTION INDUSTRY - S. 1(4) - ASSOCIATED OR RELATED ACTIVITIES OF BUSINESSES - WHETHER BOARD WILL TREAT COMPANIES AS ONE EMPLOYER - WHETHER BOARD WILL EXCLUDE STUDENTS OR 24 HOUR PERSONS - WHETHER ALL EMPLOYEE UNIT APPROPRIATE - WHETHER UNIT DESCRIBED IN TERMS OF TRADE ON THE JOB AT DATE OF THE MAKING OF THE APPLICATION.

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183, (ROCK AND TUNNEL WORKERS DIVISION) v. INDUSTRIAL-MINE INSTALLATIONS LIMITED AND I.M.I. UNDERGROUND CONTRACTORS LIMITED

712

BARGAINING UNITS - RESTRICTION TO DIVISION OF EMPLOYER WHERE EMPLOYER TRADES UNDER NAME OF DIVISION.

CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 175, CHARTERED BY AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC v. M. LOEB (LONDON) LIMITED

742

CERTIFICATION - PRACTICE - APPLICANT SLIGHTLY MORE
THAN SIXTY-FIVE PER CENT - WHETHER BOARD WILL ORDER
A VOTE.

HOTEL AND RESTAURANT EMPLOYEES UNION, LOCAL 743,
WINDSOR, ONTARIO, AFFILIATED WITH HOTEL AND RESTAURANT
EMPLOYEES AND BARTENDERS INTERNATIONAL UNION: AFL-CIO
v. SHERATON VISCOUNT MOTOR HOTEL IN THE CITY OF WINDSOR,
IN THE COUNTY OF ESSEX, PRESENTLY OPERATED IN THE NAME
OF DORNA REALTY ASSOCIATES LIMITED, BY THE RECEIVER AND
MANAGER, MACPHERSON HUBBELL APPOINTED PURSUANT TO THE
ORDER OF THE SUPREME COURT OF ONTARIO

693

CHARGES - PRACTICE - PETITION - CHARGES EMBODIED IN PETITION
- WHETHER ISSUES SHOULD BE DEALT WITH SEPARATELY -
WHETHER INCLUSION OF PETITION AND CHARGES IN ONE
DOCUMENT IS TO BE AVOIDED - LACK OF EVIDENCE RESPECTING
CUSTODY OF PETITION - WHETHER PETITION CASTS DOUBT ON
EVIDENCE OF MEMBERSHIP.

HOTEL & RESTAURANT EMPLOYEE'S BARTENDERS' INTERNATIONAL
UNION, LOCAL 280, A.F.L. C.I.O. C.L.C. v. VERED & HARVEY
COMPANY LIMITED KNOWN AS ALMONT HOTEL v. GROUP OF EM-
PLOYEES

736

CONSTITUTIONAL LAW - JURISDICTION - COMPANY PERFORMING WORK
UNDER CONTRACT WITH ATOMIC ENERGY OF CANADA LTD. -
ATOMIC ENERGY CONTROL ACT - WHETHER WORK OR WORKS
DECLARED FOR GENERAL ADVANTAGE OF CANADA - WHETHER
WORK NECESSARY PART OR INCIDENTAL TO THE WORK UNDER-
TAKING OR BUSINESS OF ATOMIC ENERGY OF CANADA LTD. -
WHETHER BOARD HAS JURISDICTION.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
v. VIS-U-RAY LIMITED

703

CONSTITUTIONAL LAW - JURISDICTION - NON-PROFIT CORPORATION
CHARTERED BY GOVERNMENT OF CANADA - MEMBERSHIP RESTRICTED
TO FEDERAL OR DOMINION PUBLIC SERVANTS - WHETHER WORK
OR UNDERTAKING WITHIN SECTION 91 OF THE BRITISH NORTH
AMERICAN ACT - WHETHER WITHIN BOARD'S JURISDICTION.

HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION,
LOCAL 261, OTTAWA, ONTARIO - AFFILIATED WITH AFL-CIO
AND C.L.C. v. OTTAWA CIVIL SERVICE RECREATIONAL
ASSOCIATION

764

CONSTRUCTION INDUSTRY - BARGAINING UNIT - S. 1(4) - ASSOCIATED OR RELATED ACTIVITIES OF BUSINESSES - WHETHER BOARD WILL TREAT COMPANIES AS ONE EMPLOYER - WHETHER BOARD WILL EXCLUDE STUDENTS OR 24 HOUR PERSONS - WHETHER ALL EMPLOYEE UNIT APPROPRIATE - WHETHER UNIT DESCRIBED IN TERMS OF TRADE ON THE JOB AT DATE OF THE MAKING OF THE APPLICATION.

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183, (ROCK AND TUNNEL WORKERS DIVISION) v. INDUSTRIAL-MINE INSTALLATIONS LIMITED AND I.M.I. UNDERGROUND CON-TRACTORS LIMITED 712

EMPLOYEES - MEMBERSHIP EVIDENCE - FOREMAN INITIATING ORGANIZATIONAL CAMPAIGN AND SIGNING MEMBERSHIP CARD IN PRESENCE OF EMPLOYEES - WHETHER UNDUE INFLUENCE - WHETHER EVIDENCE OF MEMBERSHIP REFLECTS FREE CHOICE BY EMPLOYEES.

UNITED STEELWORKERS OF AMERICA v. METAL TEXTILE OF CANADA, DIVISION OF GENCAB OF CANADA LIMITED 694

EVIDENCE - S. 65 - WHETHER EVIDENCE ADDUCED BY ONE RESPONDENT REFERABLE TO OTHER RESPONDENT.

RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC v. SUN PARLOUR GREENHOUSE GROWERS' CO-OPERATIVE LIMITED, ARMSTRONG PRODUCE COMPANY LIMITED, A.M.C. PRODUCE SHIPPTERS INCORPORATED, MASTRONARDI PRODUCE LIMITED, GARDEN ACRE SALES, AN AGENCY OF ONTARIO GREEN-HOUSE PRODUCERS MARKETING BOARD 743

JURISDICTION - CONSTITUTIONAL LAW - COMPANY PERFORMING WORK UNDER CONTRACT WITH ATOMIC ENERGY OF CANADA LTD. - ATOMIC ENERGY CONTROL ACT - WHETHER WORK OR WORKS DECLARED FOR GENERAL ADVANTAGE OF CANADA - WHETHER WORK NECESSARY PART OR INCIDENTAL TO THE WORK UNDERTAKING OR BUSINESS OF ATOMIC ENERGY OF CANADA LTD. - WHETHER BOARD HAS JURISDICTION.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 v. VIS-U-RAY LIMITED 703

JURISDICTION - CONSTITUTIONAL LAW - NON-PROFIT CORPORATION CHARTERED BY GOVERNMENT OF CANADA - MEMBERSHIP RESTRICTED TO FEDERAL OR DOMINION PUBLIC SERVANTS - WHETHER WORK OR UNDERTAKING WITHIN SECTION 91 OF THE BRITISH NORTH AMERICAN ACT - WHETHER WITHIN BOARD'S JURISDICTION.

HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION, LOCAL 261, OTTAWA, ONTARIO - AFFILIATED WITH AFL-CIO AND C.L.C. v. OTTAWA CIVIL SERVICE RECREATIONAL ASSOCIATION	764
JURISDICTIONAL DISPUTE - LABOURERS AND IRONWORKERS - UN- LOADING, ERECTION AND FINISHING OF PRECAST ARCHITECTURAL WALL PANELS.	
INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 700 v. DUFFERIN PRECAST COMPANY, A DIVISION OF DUFFERIN MATERIALS & CONSTRUCTION LTD., AND LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCALS 506 AND 1059	698
JURISDICTIONAL DISPUTE - CORRECTION RE LABOURERS' AND PIPE- FITTERS 1971 OLRB REP. PAGE 477.	
LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 607 v. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 628 AND CANADIAN INTERNATIONAL COMSTOCK COMPANY LIMITED	718
MEMBERSHIP EVIDENCE - EMPLOYEES - FOREMAN INITIATING ORGANIZATIONAL CAMPAIGN AND SIGNING MEMBERSHIP CARD IN PRESENCE OF EMPLOYEES - WHETHER UNDUE INFLUENCE - WHETHER EVIDENCE OF MEMBERSHIP REFLECTS FREE CHOICE BY EMPLOYEES.	
UNITED STEELWORKERS OF AMERICA v. METAL TEXTILE OF CANADA, DIVISION OF GENCAB OF CANADA LIMITED	694
PETITION - EMPLOYEES RECEIVING OFFER OF MORE MONEY FOR SATURDAY OR SUNDAY WORK - WHETHER CONTRARY TO SECTION 70(2) - WHETHER DOUBT CAST ON MEMBERSHIP EVIDENCE.	
CANADIAN UNION OF OPERATING ENGINEERS v. ACRITEX YARNS LIMITED v. GROUP OF EMPLOYEES	762
PETITION - PRACTICE - CHARGES - CHARGES EMBODIED IN PETITION - WHETHER ISSUES SHOULD BE DEALT WITH SEPARATELY - WHETHER INCLUSION OF PETITION AND CHARGES IN ONE DOCUMENT IS TO BE AVOIDED - LACK OF EVIDENCE RESPECTING CUSTODY OF PETITION - WHETHER PETITION CASTS DOUBT ON EVIDENCE OF MEMBERSHIP.	

HOTEL & RESTAURANT EMPLOYEE'S BARTENDERS' INTERNATIONAL
UNION, LOCAL 280, A.F.L. C.I.O. C.L.C. v. VERED & HARVEY
COMPANY LIMITED KNOWN AS ALMONT HOTEL v. GROUP OF EM-
PLOYEES

736

PETITION - TERMINATION - INVOLVEMENT OF FOREMAN - WHETHER
PETITION VOLUNTARILY SIGNED.

PIERRE ARTS v. LONDON AND DISTRICT BUILDING SERVICE
WORKERS' UNION, LOCAL 220, S.E.I.U., A.F. OF L., C.I.O.,
C.L.C. v. THE CANADIAN LINEN SUPPLY (ONTARIO) LIMITED.....

757

PRACTICE - CERTIFICATION - APPLICANT SLIGHTLY MORE THAN
SIXTY-FIVE PER CENT - WHETHER BOARD WILL ORDER A VOTE.

HOTEL AND RESTAURANT EMPLOYEES UNION, LOCAL 743,
WINDSOR, ONTARIO, AFFILIATED WITH HOTEL AND RESTAURANT
EMPLOYEES AND BARTENDERS INTERNATIONAL UNION: AFL-CIO
v. SHERATON VISCOUNT MOTOR HOTEL IN THE CITY OF WINDSOR,
IN THE COUNTY OF ESSEX, PRESENTLY OPERATED IN THE NAME
OF DORNA REALTY ASSOCIATES LIMITED, BY THE RECEIVER
AND MANAGER, MACPHERSON HUBBELL APPOINTED PURSUANT TO
THE ORDER OF THE SUPREME COURT OF ONTARIO

693

PRACTICE - PETITION - CHARGES - CHARGES EMBODIED ON PETITION -
WHETHER ISSUES SHOULD BE DEALT WITH SEPARATELY -
WHETHER INCLUSION OF PETITION AND CHARGES IN ONE
DOCUMENT IS TO BE AVOIDED - LACK OF EVIDENCE RESPECTING
CUSTODY OF PETITION - WHETHER PETITION CASTS DOUBT ON
EVIDENCE OF MEMBERSHIP.

HOTEL & RESTAURANT EMPLOYEE'S BARTENDERS' INTERNATIONAL
UNION, LOCAL 280, A.F.L. C.I.O. C.L.C. v. VERED & HARVEY
COMPANY LIMITED KNOWN AS ALMONT HOTEL v. GROUP OF EM-
PLOYEES

736

PRACTICE - REPRESENTATION VOTE - WHETHER BOARD EXERCISES
CONTROL OVER CHOICE OF SCRUTINEER.

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL
183 v. SWINGLINE OF CANADA LTD.

710

PRACTICE - REQUEST TO REOPEN HEARING - REQUEST NOT MADE AT
HEARING - PARTY CALLING WITNESSES - WHETHER BOARD WILL
REOPEN CASE TO PERMIT FURTHER EVIDENCE.

THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1669 v. G. A. BAERT CONSTRUCTION (1964) LTD.	760
PRACTICE - SISTER LOCAL OF APPLICANT MAKING EARLIER APPLICATION - APPLICATION DISMISSED AND BAR IMPOSED - WHETHER APPLICANT BOUND BY BAR PLACED ON SISTER LOCAL.	
LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 v. SWINGLINE OF CANADA LTD.	710
PRACTICE - SECTION 65 - WHETHER COMPLAINT SUFFICIENT TO INDICATE SUBJECT MATTER WITHIN PURVIEW OF LABOUR RELATIONS ACT - RESPONDENT FILING REPLY AND PARTICIPAT- ING IN HEARING - PRACTICE AND PROCEDURE OF COURTS - EFFECT ON BOARD - PARTICULARS - WHETHER BOARD TO MAKE A NARROW AND TECHNICAL VIEW OF THE PROCEDURES - WHETHER RESPONDENT PREJUDICED - WHETHER OBJECTION TO BE MADE AT OUTSET OF HEARING.	
RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL- CIO-CLC v. SUN PARLOUR GREENHOUSE GROWERS' CO-OPERATIVE LIMITED, ARMSTRONG PRODUCE COMPANY LIMITED, A.M.C. PRO- DUCE SHIPPERS INCORPORATED, MASTRONARDI PRODUCE LIMITED, GARDEN ACRE SALES, AN AGENCY OF ONTARIO GREENHOUSE PRO- DUCERS MARKETING BOARD	743
PRACTICE - SECTION 65 - NONSUIT - EFFECT OF HEARING - WHETHER EVIDENCE ADDUCED BY ONE RESPONDENT REFERRABLE TO OTHER RESPONDENT - WHETHER BOARD WILL RULE ON NON- SUIT IN FACE OF ELECTION - WHETHER RESPONDENT ELECTING MAY PARTICIPATE IN PROCEEDINGS.	
RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL- CIO-CLC v. SUN PARLOUR GREENHOUSE GROWERS' CO-OPERATIVE LIMITED, ARMSTRONG PRODUCE COMPANY LIMITED, A.M.C. PRO- DUCE SHIPPERS INCORPORATED, MASTRONARDI PRODUCE LIMITED, GARDEN ACRE SALES, AN AGENCY OF ONTARIO GREENHOUSE PRO- DUCERS MARKETING BOARD	743
REPRESENTATION VOTE - PRACTICE - WHETHER BOARD EXERCISES CONTROL OVER CHOICE OF SCRUTINEER.	
LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 v. SWINGLINE OF CANADA LTD.	710

SALE OF BUSINESS - ASSETS AND UNDERTAKINGS PLACED IN
RECEIVERSHIP - INCORPORATION OF NEW COMPANY - NO
CONTINUUM OF BUSINESS - WHETHER SALE OF BUSINESS.

INTERNATIONAL WOODWORKERS OF AMERICA v. WOODWAY
STRUCTURAL COMPONENTS v. GROUP OF EMPLOYEES 732

SALE OF BUSINESS - S. 47A - DEBENTURE HOLDER ACQUIRING
TITLE TO ASSETS, PROPERTY AND BUSINESS - PURCHASE OF
ASSETS, PROPERTY AND BUSINESS FROM DEBENTURE HOLDER
AND INTERIM RECEIVER - WHETHER SALE OF BUSINESS -
INTERMINGLING - WHETHER BOARD WILL HOLD A VOTE.

PARNELL FOODS LIMITED (TORONTO DIVISION) v. LOCAL 908,
UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF
AMERICA, AFL-CIO-CLC v. RETAIL CLERKS INTERNATIONAL
ASSOCIATION v. CERTAIN EMPLOYEES 715

SECTION 65 - DISCHARGE FOR UNION ACTIVITY.

RETAIL CLERKS INTERNATIONAL ASSOCIATION v. ZEHR'S
MARKETS LIMITED 706

SECTION 65 - NECESSITY FOR ALLEGATION TO BE CONTRARY TO
SOME PROVISION OF THE ACT AND IN ADDITION RELATE TO
EMPLOYMENT OR CONDITIONS OF EMPLOYMENT.

PERCY WOODS v. NAPANEE INDUSTRIES LTD. 730

SECTION 65 - WHETHER EMPLOYEE DISCHARGED FOR UNION ACTIVITY
- ONUS OF PROOF - CREDIBLE EXPLANATION - WHETHER
UNION ADHERENT ENTITLED TO IMMUNITY FROM DISMISSAL.

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL
183 v. SWINGLINE OF CANADA LIMITED 765

SECTION 65 - PRACTICE - NONSUIT - EFFECT OF HEARING -
WHETHER EVIDENCE ADDUCED BY ONE RESPONDENT REFERRABLE
TO OTHER RESPONDENT - WHETHER BOARD WILL RULE ON
NONSUIT IN FACE OF ELECTION - WHETHER RESPONDENT
ELECTING MAY PARTICIPATE IN PROCEEDINGS.

RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED
MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-
CIO-CLC v. SUN PARLOUR GREENHOUSE GROWERS' CO-OPERATIVE
LIMITED, ARMSTRONG PRODUCE COMPANY LIMITED, A.M.C. PRO-
DUCE SHIPPERS INCORPORATED, MASTRONARDI PRODUCE LIMITED,

GARDEN ACRE SALES, AN AGENCY OF ONTARIO GREENHOUSE
PRODUCERS MARKETING BOARD

743

SECTION 65 - PRACTICE - WHETHER COMPLAINT SUFFICIENT TO
INDICATE SUBJECT MATTER WITHIN PURVIEW OF LABOUR
RELATIONS ACT - RESPONDENT FILING REPLY AND PARTI-
CIPATING IN HEARING - PRACTICE AND PROCEDURE OF
COURTS - EFFECT ON BOARD - PARTICULARS - WHETHER
BOARD TO TAKE A NARROW AND TECHNICAL VIEW OF THE
PROCEDURES - WHETHER RESPONDENT PREJUDICED - WHETHER
OBJECTION TO BE MADE AT OUTSET OF HEARING.

RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED
MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-
CIO-CLC v. SUN PARLOUR GREENHOUSE GROWERS' CO-OPERATIVE
LIMITED, ARMSTRONG PRODUCE COMPANY LIMITED, A.M.C. PRO-
DUCE SHIPPERS INCORPORATED, MASTRONARDI PRODUCE LIMITED,
GARDEN ACRE SALES, AN AGENCY OF ONTARIO GREENHOUSE
PRODUCERS MARKETING BOARD

743

TERMINATION - PETITION - INVOLVEMENT OF FOREMAN - WHETHER
PETITION VOLUNTARILY SIGNED.

PIERRE ARTS v. LONDON AND DISTRICT BUILDING SERVICE
WORKERS' UNION, LOCAL 220, S.E.I.U., A.F. OF L., C.I.O.,
C.L.C. v. THE CANADIAN LINEN SUPPLY (ONTARIO) LIMITED.....

757

EVIDENCE TO "THE PRESENT AGREEMENT AND THE ONE BEFORE IT," ALTHOUGH NO AGREEMENT WAS IN FACT PROVED, TOGETHER WITH ALL THE OTHER CIRCUMSTANCES OF THE CASE, WARRANT THE ORDERING OF A REPRESENTATION VOTE.

3. THE INSTANT CASE, AS IN THE PETERBOROUGH CASE, PRESENTS A NUMBER OF UNUSUAL FACTORS WHICH MUST BE TAKEN INTO CONSIDERATION BEFORE ARRIVING AT ANY FINAL DECISION.

4. A SIGNED DOCUMENT PURPORTING TO BE A COLLECTIVE AGREEMENT BETWEEN THE ATLANTIC PACKAGING COMPANY EMPLOYEES' ASSOCIATION AND THE RESPONDENT WAS FILED WITH THE BOARD BY THE RESPONDENT. THIS SIGNED AGREEMENT IN WRITING BETWEEN THESE TWO PARTIES WAS IN OPERATION FROM OCTOBER 15, 1968 TO OCTOBER 15, 1969. A RENEWAL OF THIS AGREEMENT SIGNED BY THE PARTIES INCLUDED INTER ALIA AMENDMENTS TO THE PROVISIONS OF THE PREVIOUS AGREEMENT RELATING TO OVERTIME HOURS OF WORK, CALL-IN PAY, PAID BEREAVEMENT LEAVE, SHIFT DIFFERENTIALS AND WAGE INCREASES OF 5% EFFECTIVE OCTOBER 20, 1969 TO OCTOBER 16, 1970 AND A FURTHER WAGE INCREASE OF 5% BASED ON THE 1968 WAGE SCALE TO BE EFFECTIVE FROM OCTOBER 18, 1970 TO OCTOBER 15, 1971.

5. COUNSEL FOR THE APPLICANT ADMITTED HE KNEW OF THE EXISTENCE OF THIS AGREEMENT. MOREOVER, ALTHOUGH THE MEETING OF THE EMPLOYEES' ASSOCIATION WAS HELD IN APRIL, 1971, COUNSEL ADVISED THE APPLICANT TO WITHHOLD MAKING AN APPLICATION FOR CERTIFICATION UNTIL THE LAST TWO MONTHS THE AGREEMENT WAS TO OPERATE. SURELY THIS IS RECOGNITION OF THE EXISTENCE OF THE AGREEMENT AS WELL AS THE ESTABLISHED BARGAINING RELATIONSHIP BETWEEN THE SAID ASSOCIATION AND THE RESPONDENT.

6. THERE IS NOT A SHRED OF EVIDENCE BEFORE THE BOARD THAT THE EMPLOYEES' ASSOCIATION HAS BEEN DISSOLVED. IN FACT, MR. R. ROWSELL, WHO GAVE EVIDENCE AT THE HEARING, STATED UNDER OATH THAT HE IS VICE-PRESIDENT OF THE EMPLOYEES' ASSOCIATION AND ALSO PRESIDENT OF THE APPLICANT UNION, LOCAL 894. THE SAME SITUATION EXISTED IN THE PETERBOROUGH CASE WHERE AN EMPLOYEE GAVE EVIDENCE ON BEHALF OF THE APPLICANT UNION IN THAT CASE AND STATED THAT HE STILL HELD THE OFFICE OF PRESIDENT OF THE PETERBOROUGH BOARD OF EDUCATION CARE-TAKERS' AND MAINTENANCE ASSOCIATION.

7. HAVING REGARD TO ALL THE ABOVE CIRCUMSTANCES INCLUDING THE FACT THAT 27 OF THE 36 MEMBERSHIP CARDS FILED BY THE APPLICANT WERE SIGNED BY THE EMPLOYEES CONCERNED OVER THREE MONTHS PRIOR TO THE DATE OF THE MAKING OF THIS APPLICATION, I WOULD HAVE FOLLOWED THE PROCEDURE ADOPTED BY THE BOARD IN THE PETERBOROUGH CASE BY EXERCISING THE DISCRETION GIVEN THE BOARD UNDER SECTION 7(2) OF THE ACT AND DIRECTING A REPRESENTATION VOTE. THE VOTERS WOULD BE ASKED IF THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT UNION.

415-71-R: HOTEL AND RESTAURANT EMPLOYEES UNION, LOCAL 743, WINDSOR, ONTARIO, AFFILIATED WITH HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION: AFL-CIO (APPLICANT) V. SHERATON VISCOUNT MOTOR HOTEL IN THE CITY OF WINDSOR, IN THE COUNTY OF ESSEX, PRESENTLY OPERATED IN THE NAME OF DORNA REALTY ASSOCIATES LIMITED, BY THE RECEIVER AND MANAGER, MACPHERSON HUBBELL APPOINTED PURSUANT TO THE ORDER OF THE SUPREME COURT OF ONTARIO (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: L. A. MACLEAN AND JAMES GRAHAM FOR THE APPLICANT, C. G. RIGGS, G. MACGIRR AND G. A. PHILLIPS FOR THE RESPONDENT.

DECISION OF THE BOARD: NOVEMBER 1, 1971.

1. THIS IS AN APPLICATION FOR CERTIFICATION.

...

6. THE RESPONDENT REQUESTED THE BOARD TO DIRECT A REPRESENTATION VOTE IN THIS MATTER ON THE GROUNDS THAT THE APPLICANT ONLY CLAIMED SLIGHTLY MORE THAN SIXTY-FIVE PER CENT OF THE RESPONDENT'S EMPLOYEES AS MEMBERS AND ALSO THAT OVER FIVE MONTHS HAD ELAPSED BETWEEN THE DATE THIS APPLICATION WAS MADE AND THE DATE OF THE FINAL HEARING IN THIS MATTER. WHILE THE DELAY WAS NECESSITATED BY THE REQUIREMENT THAT THE APPLICANT OBTAIN LEAVE OF THE SUPREME COURT OF ONTARIO BEFORE PROCEEDING WITH THIS APPLICATION, A GREAT NUMBER OF EMPLOYEES WHO WERE EMPLOYED BY THE RESPONDENT ON THE DATE THIS APPLICATION WAS MADE HAVE BEEN SEPARATED FROM THEIR EMPLOYMENT SINCE THAT DATE AND HAVE BEEN REPLACED BY OTHER EMPLOYEES AND ADDITIONAL EMPLOYEES HAVE ALSO BEEN HIRED.

7. WHILE THE BOARD HAS THE DISCRETION TO DIRECT A REPRESENTATION VOTE IN CERTIFICATION APPLICATIONS, THAT DISCRETION CANNOT BE EXERCISED ARBITRARILY BUT MUST BE EXERCISED JUDICIOUSLY. UNDER THE PROVISIONS OF SECTION 7(1) OF THE ACT, ON AN APPLICATION FOR CERTIFICATION THE BOARD MUST ASCERTAIN THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT "AT THE TIME THE APPLICATION WAS MADE". UNDER THAT SECTION THE BOARD MUST ALSO ASCERTAIN THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT WHO WERE MEMBERS OF THE TRADE UNION AT SUCH TIME AS IS DETERMINED UNDER CLAUSE (J) OF SUBSECTION (2) OF SECTION 92 (THE TERMINAL DATE OF THIS APPLICATION). UNLESS THE APPLICANT'S MEMBERSHIP EVIDENCE IS CAST IN DOUBT BY A STATEMENT OF OBJECTIONS FILED BY EMPLOYEES WHO ALSO SIGNED APPLICATION FOR MEMBERSHIP CARDS IN THE APPLICANT OR UNLESS THERE IS SOME UNRESOLVED DOUBT CONCERNING THE MEM-

BERSHIP EVIDENCE WHICH WAS CREATED BY SOME ACT OR OMISSION ON THE PART OF THE APPLICANT UNION, WHERE THE BOARD IS SATISFIED THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT ARE MEMBERS OF THE APPLICANT, THE BOARD "SHALL CERTIFY THE TRADE UNION AS THE BARGAINING AGENT OF THE EMPLOYEES IN THE BARGAINING UNIT" PURSUANT TO THE PROVISIONS OF SECTION 7(3) OF THE ACT.

8. THE RIGHT OF AN APPLICANT TO OUTRIGHT CERTIFICATION IS NO GREATER OR LESS WHETHER THE APPLICANT ENJOYS CLEAR EVIDENCE OF MEMBERSHIP JUST SLIGHTLY MORE THAN SIXTY-FIVE PER CENT OR MUCH MORE THAN SIXTY-FIVE PER CENT. AGAIN, THE ONLY TWO DATES THAT THE BOARD IS ENTITLED TO CONSIDER WHEN ASSESSING THE PERCENTAGE OF MEMBERSHIP ENJOYED BY AN APPLICANT IS THE DATE THE APPLICATION WAS MADE (FOR DETERMINING THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT) AND THE DATE FIXED PURSUANT TO THE PROVISIONS OF SECTION 92(2)(J) OF THE ACT (THE TERMINAL DATE FOR DETERMINING WHICH OF THE EMPLOYEES IN THE BARGAINING UNIT WERE MEMBERS OF THE APPLICANT).

9. IN THE INSTANT CASE, THERE IS NOTHING BEFORE THE BOARD WHICH CAST DOUBT ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT OR THE PERCENTAGE OF MEMBERSHIP ENJOYED BY THE APPLICANT ON THE DATES REFERRED TO ABOVE. THE BOARD CANNOT, THEREFORE, GIVE EFFECT TO THE RESPONDENT'S REQUEST THAT A REPRESENTATION VOTE BE DIRECTED IN THIS CASE.

10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

737-71-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. METAL TEXTILE OF CANADA, DIVISION OF GEN CAB OF CANADA LIMITED (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS F.W. MURRAY AND P.J. O'KEEFE.

APPEARANCES AT THE HEARING: LORNE INGLE, GERALD GRIFFIN AND BEN DESROCHES FOR THE APPLICANT; E.L. STRINGER, Q.C., D. ELLIS AND M. WEBBER FOR THE RESPONDENT.

DECISION OF THE BOARD: NOVEMBER 2, 1971.

1. THE NAME "METAL TEXTILE CORPORATION OF CANADA LTD." APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "METAL TEXTILE OF CANADA, DIVISION OF GEN CAB OF CANADA LIMITED".

2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

3. IN THIS MATTER THE EMPLOYER SUBMITS THAT MR. L. LEMIEUX, A FOREMAN, WAS PROMINENT IN INITIATING THE ORGANIZATIONAL CAMPAIGN OF THE APPLICANT, THAT HE SIGNED A MEMBERSHIP CARD IN THE APPLICANT UNION AND WAS PRESENT AT AN ORGANIZATIONAL MEETING WHEN THE OTHER EMPLOYEES SIGNED MEMBERSHIP CARDS IN THE APPLICANT UNION. THE EMPLOYER ALLEGES FURTHER THAT THESE ACTS CONSTITUTED A VIOLATION OF SECTION 56 (FORMERLY SECTION 48) OF THE LABOUR RELATIONS ACT.

4. THE APPLICANT TRADE UNION ADMITS THAT MR. LEMIEUX IS A FOREMAN WHO EXERCISES MANAGERIAL FUNCTIONS. THE EVIDENCE FURTHER SHOWS THAT MR. LEMIEUX INITIATED THE ORGANIZATION OF THE APPLICANT'S EMPLOYEES. HE ORIGINALLY APPROACHED THE UNION WITH ANOTHER EMPLOYEE, A MR. SULLIVAN, WHO HAD THE EQUIVALENT STATUS IN THE COMPANY AS MR. LEMIEUX. A MEETING OF THE RESPONDENT'S EMPLOYEES WAS THEN ARRANGED WHICH WAS ATTENDED BY MR. LEMIEUX WITH OTHER EMPLOYEES. AT THE MEETING MR. LEMIEUX SAT AT THE BACK OF THE MEETING ROOM AND THEN WALKED TO THE FRONT OF THE ROOM AND SIGNED A MEMBERSHIP CARD IN THE PRESENCE OF THE OTHER EMPLOYEES WHO WERE IN ATTENDANCE. SOME OF THE EMPLOYEES AT THE MEETING ALSO SIGNED MEMBERSHIP CARDS. THE EVIDENCE ALSO INDICATES THAT THIS FOREMAN WAS ACTING ON HIS OWN BEHALF WITHOUT THE KNOWLEDGE OF THE EMPLOYER.

5. THE EMPLOYER SUBMITS THAT THE ACTIONS OF THE FOREMAN CONSTITUTED INTERFERENCE OR PARTICIPATION OR A CONTRIBUTION OF SUPPORT BY THE EMPLOYER WITH THE SELECTION OR REPRESENTATION OF EMPLOYEES BY A TRADE UNION CONTRARY TO SECTION 56 OF THE ACT. THE UNION SUBMITS THAT THE PURPOSE OF THE LEGISLATION IS TO PROHIBIT SWEETHEART ARRANGEMENTS BETWEEN EMPLOYERS AND TRADE UNIONS AND THAT THE ACTS OF THE FOREMAN DO NOT VIOLATE THE SPIRIT OR THE PROVISIONS OF THE ACT.

6. THERE ARE TWO SIGNIFICANT PRINCIPLES THAT MAY BE DISCERNED FROM THE LEGISLATION AND THE CASES IN THIS AREA. FIRST, THERE IS THE PRINCIPLE THAT A TRADE UNION MAINTAIN AN ARMS LENGTH RELATIONSHIP WITH AN EMPLOYER. THIS AVOIDS SWEETHEART ARRANGEMENTS OR ARRANGEMENTS MADE BETWEEN UNION AND EMPLOYER WHICH ARE NOT TO THE FULL ADVANTAGE OF THE EMPLOYEES. THAT SITUATION IS TO BE AVOIDED BECAUSE A NON ARMS LENGTH TRANSACTION LEADS TO THE REASONABLE INFERENCE THAT ANY RESULTING COLLECTIVE AGREEMENT OR ARRANGEMENT BETWEEN THE EMPLOYER AND THE UNION WILL BE DETRIMENTAL TO THE EMPLOYEES. IN THAT TYPE OF CASE IT DOES NOT MATTER WHETHER THE EMPLOYEES ARE AWARE OF THE RELATIONSHIP BETWEEN THE EMPLOYER AND THE UNION - THAT IS OF NO MOMENT. EVEN IF THE EMPLOYEES JOINED A MANIPULATED OR NON ARMS LENGTH UNION WITHOUT KNOWLEDGE OF THE EMPLOYER'S INVOLVEMENT THIS BOARD WILL NOT SANCTION THE ARRANGEMENTS. SECTION 10 OF THE LABOUR RELATIONS ACT REFLECTS THE PRINCIPLE AND PREVENTS CERTIFICATION WHERE THERE IS A NON ARMS LENGTH TRANSACTION.

7. SECOND, THERE IS THE PRINCIPLE THAT EMPLOYEES ARE TO BE PROTECTED FROM UNDUE INFLUENCES IN ORDER THAT THEY MAY PROPERLY EXERCISE THEIR SECTION 3 RIGHT TO JOIN A TRADE UNION OF THEIR OWN CHOICE. THE RESULT OF PROTECTING THE EMPLOYEES MAY BE BENEFICIAL OR DETRIMENTAL TO THE INTERESTS OF THE EMPLOYER OR TO THE INTERESTS OF THE UNION IN AN INDIVIDUAL APPLICATION DEPENDING ON THE FACTS OF THE PARTICULAR CASE; BUT, ALTHOUGH THE EMPLOYER AND THE UNION ARE USUALLY THE TWO SEPARATE PARTIES TO THE APPLICATION THE BOARD CONSIDERS THAT THE SECTION 3 RIGHTS OF THE EMPLOYEES ARE PROTECTED AS A SEPARATE AND IDENTIFIABLE INTEREST FROM EITHER THE EMPLOYER'S INTEREST OR THE UNION'S INTEREST. HENCE IN A CASE WHERE AN EMPLOYER HAS IMPROPERLY INFLUENCED EMPLOYEES TO SIGN A PETITION AGAINST THE UNION, THE DISCOUNTING OF THE PETITION BY THIS BOARD IS NOT INTENDED TO BENEFIT THE UNION AT THE EXPENSE OF THE EMPLOYER. IT IS MERELY TO ENSURE THAT THE FREE EXERCISE OF THE RIGHTS OF THE EMPLOYEES ARE CONSIDERED AS A SEPARATE INTEREST AND ARE PROTECTED. SIMILARLY, WHERE A UNION EXERTS UNDUE INFLUENCE ON EMPLOYEES A DECISION DISMISSING AN APPLICATION IS NOT TO BENEFIT THE EMPLOYER AT THE EXPENSE OF THE UNION - AGAIN IT IS TO PROTECT THE EMPLOYEES IN THE EXERCISE OF THEIR FREEDOM OF CHOICE UNDER SECTION 3 OF THE ACT. READY-MIX, BUILDING SUPPLY, HYDRO & CONSTRUCTION DRIVERS, WAREHOUSEMEN & HELPERS LOCAL 230 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA V. MILLWORK AND BUILDING SUPPLIES COMPANY LIMITED, 1968 JUNE OLRB MTHLY. REP. 273 AT P. 275.

9. IN THE UNDUE INFLUENCE CASES THERE IS AN EXCEPTION IN THOSE SITUATIONS WHERE THE CONDUCT OF A FOREMAN OR SUPERVISOR CAN BE CLEARLY DEMONSTRATED TO BE CONTRARY TO THE INTERESTS OF THE EMPLOYER. IN THAT CASE THE UNDUE INFLUENCE OSTENSIBLY EMANATING FROM THE EMPLOYER IS DISCOUNTED. THE LEADING CASE IS UNITED STEELWORKERS OF AMERICA V. AIR LIQUIDE 1962 JANUARY OLRB MTHLY. REP. 558; 64 CLLC 634. IN THAT CASE THE ACTING OFFICE MANAGER, CHARLES ROWE, SUPPORTED THE UNION IN ITS ATTEMPT TO ORGANIZE THE EMPLOYEES. THE BOARD IN EFFECT FOUND THAT ANY INFLUENCE BY THE EMPLOYER WAS NEUTRALIZED OR BROKEN INSOFAR AS THE EMPLOYEES WERE CONCERNED, AND ACCORDINGLY THE SECTION 3 RIGHTS OF THE EMPLOYEES WERE NOT VIOLATED. IN ARRIVING AT ITS DECISION THE BOARD STATED AT FOLLOWS AT P. 635:

"...HOWEVER, WHAT IS MORE IMPORTANT, IS THAT THE EMPLOYEES WERE AWARE THAT ANYTHING ROWE DID WITH REGARD TO THE UNION WAS DONE BY HIM NOT IN SUPPORT OF, BUT CONTRARY TO THE INTERESTS OF, THE EMPLOYER."

IN THE PRESENT CASE THERE IS NO EVIDENCE THAT THE EMPLOYEES WERE AWARE THAT ANYTHING DONE BY MR. LEMIEUX WAS NOT IN SUPPORT OF AND CONTRARY TO THE INTEREST OF THE EMPLOYER, SO THAT THIS CASE DOES

NOT FALL WITHIN THE EXCEPTION.

10. FURTHER, IN THE MILLWORK AND BUILDING SUPPLIES COMPANY LIMITED CASE, SUPRA, THE BOARD SPECIFICALLY DEALT WITH THE SITUATION WHERE A FOREMAN WAS INVOLVED IN THE ORGANIZATION OF EMPLOYEES. THE BOARD SAID AT P. 276:

"THE THIRD SITUATION WITH WHICH THE BOARD HAS DEALT IS THE CASE WHERE THE FOREMAN HAS ACTUALLY ORGANIZED THE EMPLOYEES ON BEHALF OF THE UNION BY CAUSING THE EMPLOYEES TO SIGN CARDS IN HIS PRESENCE AND BY ACTING AS THE UNION AGENT IN COLLECTING THE INITIATION FEE. SUCH EXTENSIVE AND DIRECT INVOLVEMENT HAS BEEN TREATED BY THE BOARD AS HAVING DEPRIVED THE EMPLOYEES OF THE EXERCISE OF THEIR FREEDOM OF CHOICE. THE MEMBERSHIP EVIDENCE IN SUCH CASE HAS NOT BEEN GIVEN EFFECT TO BY THE BOARD (SEE MCCARTHY MILLING COMPANY LIMITED CASE, 54 C.L.L.C. ¶17,070, AND SWIFT CANADIAN CO., LIMITED CASE, 54 C.L.L.C. ¶17,071)."

11. WHEN WE APPLY THE FOREGOING CONSIDERATIONS TO THE FACTS OF THIS CASE WE FIND THAT THE ACTIVITIES OF THE FOREMAN AND PARTICULARLY HIS PRESENCE AT THE ORGANIZATIONAL MEETING AND HIS SIGNING OF A MEMBERSHIP CARD IN THE PRESENCE OF THE OTHER EMPLOYEES CONSTITUTED UNDUE INFLUENCE. IT IS REASONABLE TO ASSUME THAT ONCE HE ATTENDED THE MEETING AND SIGNED A MEMBERSHIP CARD THAT OTHER EMPLOYEES PRESENT AT THE MEETING WOULD FOLLOW SUIT AND SIGN MEMBERSHIP CARDS. IN THE CIRCUMSTANCES WE ARE NOT PREPARED TO ACCEPT THE EVIDENCE OF MEMBERSHIP FILED AS REFLECTING A FREE CHOICE BY THE EMPLOYEES CONCERNED AND ACCORDINGLY THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT MUST BE DISCOUNTED.

12. THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

13. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JULY 21, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO

BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

14. THE APPLICATION IS ACCORDINGLY DISMISSED.

724-71-JD: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 700 (COMPLAINANT) V. DUFFERIN PRECAST COMPANY, A DIVISION OF DUFFERIN MATERIALS & CONSTRUCTION LTD., AND LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCALS 506 AND 1059 (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: A. E. GOLDEN, D. ESTRIN, P. DOYLE AND J. HARROWER FOR THE COMPLAINANT; K. G. SCOTT AND M. MERLIN FOR THE RESPONDENT COMPANY; R. KOSKIE, T. NEIL AND M. G. HORAN FOR THE RESPONDENT UNIONS.

DECISION OF THE BOARD: NOVEMBER 9, 1971.

1. THE NAME "DUFFERIN PRECAST COMPANY, A DIVISION OF DUFFERIN MATERIALS AND CONSTRUCTION LIMITED" APPEARING IN THE STYLE OF CAUSE OF THIS COMPLAINT AS THE NAME OF THE RESPONDENT COMPANY IS AMENDED TO READ: "DUFFERIN PRECAST COMPANY, A DIVISION OF DUFFERIN MATERIALS & CONSTRUCTION LTD."

2. THIS IS A COMPLAINT MADE UNDER SECTION 81 OF THE LABOUR RELATIONS ACT.

3. THE WORK IN DISPUTE BETWEEN THE COMPLAINANT AND RESPONDENT TRADE UNIONS IS THE UNLOADING, ERECTION AND FINISHING OF PRECAST ARCHITECTURAL WALL PANELS BEING USED ON THE SOCIAL SCIENCE CENTRE PROJECT OF THE RESPONDENT DUFFERIN PRECAST COMPANY, A DIVISION OF DUFFERIN MATERIALS & CONSTRUCTION LTD. AT THE UNIVERSITY OF WESTERN ONTARIO IN LONDON INCLUDING THE RIGGING, HOOKING ON, SIGNALLING, LANDING, SHIMMING, PLUMBING, ALIGNING, LEVELLING AND ANCHORING OF THE SAID PANELS.

4. THE EVIDENCE IS THAT PRECAST ARCHITECTURAL PANELS, WHICH ARE ALSO KNOWN AS FACIAL PANELS, FIRST BEGAN TO BE USED AS EXTERIOR WALL CLADDING ON BUILDING PROJECTS IN THE LONDON AREA IN THE LATTER PART OF THE 1950'S. THE VOLUME, NOT ONLY IN TERMS OF THE NUMBER AND SIZE OF THE BUILDING PROJECTS ON WHICH PRECAST ARCHITECTURAL PANELS WERE USED BUT ALSO IN TERMS OF THE NUMBER AND SIZE OF THE ACTUAL PANELS, INCREASED SUBSTANTIALLY THROUGHOUT THE 1960'S AND HAS CONTINUED

TO INCREASE IN VOLUME TO THE PRESENT TIME.

5. THROUGHOUT THE DECADE OF THE 1960'S SCHELL INDUSTRIES LIMITED AND ITS SUCCESSOR PRE-CON MURRAY, WOODSTOCK DIVISION, BOTH SUPPLIED THE PRECAST ARCHITECTURAL WALL PANELS AND DID THE ERECTION WORK ON THE VAST MAJORITY OF THE BUILDING PROJECTS IN THE LONDON AREA WHERE FACIAL PANELS WERE USED. FROM THE EARLY 1960'S THE ERECTION DEPARTMENT OF SCHELL INDUSTRIES LIMITED AND SUBSEQUENTLY ITS SUCCESSOR PRE-CON MURRAY LIMITED HAS EACH BEEN A PARTY TO A SERIES OF COLLECTIVE AGREEMENTS WITH BOTH LABOURERS' LOCAL 1059 AND IRONWORKERS LOCAL 700. BOTH COMPANIES HAVE ALWAYS EMPLOYED COMPOSITE CREWS OF LABOURERS AND IRONWORKERS TO DO THE ERECTION WORK. IN 1970, HOWEVER, ANOTHER COMPANY BASED IN THE LONDON AREA, NAMELY LONDON PRECAST PRODUCTS LIMITED, COMMENCED TO DO ERECTION WORK. SINCE THAT TIME THE COMPANY HAS ERECTED A SUBSTANTIAL VOLUME OF PRECAST ARCHITECTURAL PANELS ON A NUMBER OF LARGE BUILDING PROJECTS IN LONDON. LONDON PRECAST PRODUCTS LIMITED IS BOUND BY A COLLECTIVE AGREEMENT WITH THE LABOURERS' UNION AND HAS EMPLOYED CREWS COMPOSED SOLELY OF LABOURERS TO DO THE ERECTION WORK.

6. COMMENCING IN THE EARLY 1960'S COMPANIES BASED IN THE TORONTO AREA SUCH AS ARTEX CONCRETE LIMITED, MERLIN PRECAST ERECTORS AND BEER PRECAST CONCRETE PRODUCTS LIMITED BEGAN TO SECURE CONTRACTS IN THE LONDON AREA FOR THE ERECTION OF PRECAST ARCHITECTURAL PANELS. THESE TORONTO BASED COMPANIES WERE THEN AND HAVE CONTINUED TO BE BOUND BY COLLECTIVE AGREEMENTS WITH THE LABOURERS' LOCAL 506 WHICH IS ONE OF THE LABOURERS' LOCAL UNIONS WITH JURISDICTION IN THE TORONTO AREA. WITH ONE EXCEPTION NONE OF THESE COMPANIES HAVE HAD A COLLECTIVE BARGAINING RELATIONSHIP WITH THE IRONWORKERS. THE ONE EXCEPTION IS MERLIN PRECAST ERECTORS WHICH DID HAVE A COLLECTIVE AGREEMENT WITH THE IRONWORKERS LOCAL 700, WHICH HAS JURISDICTION IN THE LONDON AREA, FROM 1961 TO 1963. SHORTLY THEREAFTER THE COMPANY WENT OUT OF BUSINESS. ALMOST INVARIABLY THE TORONTO BASED COMPANIES INITIALLY ASSIGNED THE WORK INVOLVED IN THE ERECTION OF FACIAL PANELS TO MEMBERS OF LOCAL 506. THE CREWS OF LABOURERS SUPPLIED BY LOCAL 506 WERE SUPPLEMENTED BY LABOURERS PROVIDED BY LABOURERS' LOCAL 1059, WHICH LOCAL HAS JURISDICTION IN THE LONDON AREA. ON A FEW PROJECTS LOCAL 700 WAS ABLE TO PREVAIL UPON THE TORONTO BASED FIRMS TO INCLUDE IRONWORKERS IN THEIR CREWS TO DO THE ERECTION WORK. THE USE OF COMPOSITE CREWS BY THE TORONTO BASED FIRMS, HOWEVER, WAS AN EXCEPTION TO THEIR GENERAL PRACTICE OF EMPLOYING ONLY LABOURERS FOR THE ERECTION OF FACIAL PANELS WHICH WAS CLEARLY THEIR PREFERENCE.

7. THE ENTRY OF THE TORONTO BASED COMPANIES INTO THE PRECAST ERECTION FIELD IN THE LONDON AREA IN THE EARLY 1960'S AND THEIR ASSIGNMENT OF THE ERECTION WORK TO LABOURERS CAUSED CONSIDERABLE STRIFE BETWEEN THE LABOURERS AND IRONWORKERS IN THE AREA, AS EACH UNION SOUGHT

TO ENFORCE THEIR RESPECTIVE JURISDICTIONAL CLAIM TO THE ERECTION WORK. WE WOULD ADD THAT IT APPEARS THAT AT THE SAME TIME THERE WAS ALSO A GROWING JURISDICTIONAL CONFLICT BETWEEN LABOURERS AND IRONWORKERS OVER THE ERECTION OF PRECAST ARCHITECTURAL WALL PANEL IN OTHER CENTRES IN ONTARIO.

8. EFFORTS WERE MADE BY REPRESENTATIVES OF THE LABOURERS AND IRONWORKERS INTERNATIONAL UNIONS OVER A PERIOD OF APPROXIMATELY TWO YEARS FROM 1962 TO 1964 TO RESOLVE THE DISPUTE OVER THE ERECTION OF PRECAST ARCHITECTURAL WALL PANELS BETWEEN THE TWO TRADES. THE END RESULT OF THESE EFFORTS WAS THE DRAWING UP OF A MEMORANDUM DESIGNED TO SETTLE THE DISPUTE WHICH IS DATED JUNE 12, 1964. BY THE TERMS OF THE MEMORANDUM THE TWO TRADES AGREED THAT ALL WORK IN CONNECTION WITH THE INSTALLATION AND ERECTION OF ROOF AND FLOOR SLABS, WITH CERTAIN EXCEPTIONS, WOULD BE PERFORMED BY THE LABOURERS. IT WAS FURTHER AGREED INTER ALIA THAT ALL RIGGING, HOOKING ON, SIGNALLING, LANDING, SHIMMING AND ANCHORING WORK INCLUDING WELDING AND BOLTING IN CONNECTION WITH THE ERECTION AND INSTALLATION OF FACIAL PANELS WOULD BE DONE BY IRONWORKERS. THE MEMORANDUM WAS SIGNED BY REPRESENTATIVES OF ALL OF THE LABOURERS AND IRONWORKERS LOCAL UNIONS IN ONTARIO INCLUDING LABOURERS' LOCALS 506 AND 1059 AND IRONWORKERS LOCAL 700.

9. IT WOULD APPEAR THAT IN THE SMALL AMOUNT OF WORK DONE BY A FEW LONDON BASED GENERAL CONTRACTORS AND SUBCONTRACTORS IN THE ERECTION OF FACIAL PANELS, THE FIRMS CONCERNED ASSIGNED THE WORK TO IRONWORKERS IN COMPLIANCE WITH THE AGREEMENT. SCHELL INDUSTRIES LIMITED AND ITS SUCCESSOR PRE-CON MURRAY LIMITED CONTINUED TO ASSIGN THE ERECTION WORK TO A COMPOSITE CREW OF LABOURERS AND IRONWORKERS. THE TORONTO BASED ERECTION COMPANIES CONTINUED TO ASSIGN THE WORK INVOLVED IN THE ERECTION OF FACIAL PANELS IN THE LONDON AREA TO LABOURERS. IN OTHER WORDS, THE MEMORANDUM DID NOT HAVE THE DESIRED EFFECT OF SETTLING THE DISPUTE BETWEEN THE TWO TRADES. RATHER, THE CONFLICT BETWEEN THE LABOURERS AND IRONWORKERS PARTICULARLY AS IT RELATED TO THE ASSIGNMENT OF THE ERECTION WORK MADE BY THE TORONTO BASED COMPANIES CONTINUED UNABATED.

10. THE RESPONDENT, DUFFERIN PRECAST COMPANY, CAME INTO EXISTENCE IN THE LATTER PART OF 1969 OR EARLY 1970 AND STARTED TO DO WORK ON BUILDING CONTRACTS IN ABOUT MAY OR JUNE OF 1970. IN AUGUST OF 1970 THE COMPANY ENTERED INTO A COLLECTIVE AGREEMENT WITH THE LABOURERS' LOCAL 506 WHICH WAS TO REMAIN IN EFFECT UNTIL APRIL OF 1971. SINCE THE COMPANY COMMENCED OPERATIONS IT HAS ERECTED FACIAL WALL PANELS ON SOME 25 BUILDING PROJECTS IN ONTARIO USING CREWS COMPOSED SOLELY OF LABOURERS PROVIDED BY LOCAL 506 TO DO ALL OF THE ERECTION WORK. DURING THIS PERIOD, DUFFERIN PRECAST COMPANY HAS HAD TWO CONTRACTS IN THE LONDON AREA. ONE WAS THE LONDON LAMP PLANT AND THE WORK INVOLVED ON THAT PROJECT WAS DONE IN JUNE OF 1970. THE

OTHER IS THE SOCIAL SCIENCE CENTRE AT THE UNIVERSITY OF WESTERN ONTARIO, THE PROJECT WHICH IS THE SUBJECT OF THE INSTANT COMPLAINT. THERE IS A CONFLICT IN THE EVIDENCE AS TO WHETHER THE PRECAST WALL PANELS ERECTED ON THE LONDON LAMP PLANT WERE ARCHITECTURAL OR STRUCTURAL IN NATURE. THE ORIGINAL ASSIGNMENT MADE ON THE PROJECT BY THE COMPANY TO DO THE ERECTION WORK, BE IT FACIAL OR STRUCTURAL PANELS, WAS TO MEMBERS OF LABOURERS' LOCAL 506 WHO WERE BROUGHT TO THE PROJECT FROM TORONTO. WITHOUT GOING INTO DETAILS, THE IRONWORKERS LOCAL 700 OBJECTED TO THE ASSIGNMENT AND ULTIMATELY TWO IRONWORKERS WERE EMPLOYED IN THE CREW WHICH DID THE ERECTION WORK INVOLVED ON THE PROJECT IN A TWO DAY PERIOD.

11. AS HAS BEEN STATED, SCHELL INDUSTRIES LIMITED AND ITS SUCCESSOR PRE-CON MURRAY LIMITED, LOCATED IN WOODSTOCK, DURING ALL OF THE 1960'S DID THE VAST MAJORITY OF THE WORK INVOLVED IN THE ERECTION OF PRECAST ARCHITECTURAL WALL PANELS IN THE LONDON AREA USING COMPOSITE CREWS OF LABOURERS AND IRONWORKERS. THE AMOUNT OF ERECTION WORK PERFORMED BY LOCAL CONTRACTORS DURING THIS PERIOD WAS NEGLIGIBLE, BUT SUCH ERECTION WORK AS WAS DONE BY THEM WAS ASSIGNED TO IRONWORKERS. IN THE LAST YEAR AND A HALF, HOWEVER, A SUBSTANTIAL AMOUNT OF WORK INVOLVING THE ERECTION OF FACIAL PANELS HAS BEEN DONE BY A LOCAL CONTRACTOR, NAMELY LONDON PRECAST PRODUCTS LIMITED, USING CREWS COMPOSED SOLELY OF LABOURERS. THE REMAINING WORK IN THE LONDON AREA INVOLVING THE ERECTION OF PRECAST ARCHITECTURAL WALL PANELS HAS BEEN DONE BY TORONTO BASED CONTRACTORS, AND WITH THE EXCEPTION OF A FEW PROJECTS, THE WORK HAS BEEN ASSIGNED TO AND PERFORMED BY LABOURERS.

12. THE AREA PRACTICE OF SCHELL INDUSTRIES LIMITED AND ITS SUCCESSOR PRE-CON MURRAY LIMITED FAVOURS THE SUBMISSION OF THE IRONWORKERS THAT THE WORK INVOLVED IN THE ERECTION OF FACIAL PANELS SHOULD BE ASSIGNED TO A COMPOSITE CREW OF IRONWORKERS AND LABOURERS. THE RECENT PRACTICE OF LONDON PRECAST PRODUCTS LIMITED AND THE PRACTICE OF THE TORONTO BASED COMPANIES WORKING IN THE LONDON AREA IN ASSIGNING THE SAID ERECTION WORK EXCLUSIVELY TO LABOURERS, HOWEVER, TEND TO FAVOUR AN ASSIGNMENT OF THE WORK IN DISPUTE TO LABOURERS.

13. DUFFERIN PRECAST COMPANY, SINCE IT CAME INTO EXISTENCE AND COMMENCED OPERATIONS IN 1970, HAS ASSIGNED THE ERECTION OF FACIAL PANELS ON ALL OF ITS BUILDING PROJECTS TO LABOURERS WITH TWO EXCEPTIONS. THE TWO EXCEPTIONS ARE PROJECTS IN THE LONDON AREA, ONE BEING THE SOCIAL SCIENCE CENTRE WHICH IS THE PROJECT INVOLVED IN THE INSTANT COMPLAINT. THE ASSIGNMENT TO THE LABOURERS OF THE ERECTION WORK IN BOTH CASES WAS CHALLENGED BY THE IRONWORKERS. IT ACCORDINGLY CANNOT BE SAID THAT DUFFERIN PRECAST COMPANY HAS ANY REAL PAST PRACTICE IN THE LONDON AREA. THE OVERALL PRACTICE OF THE RESPONDENT COMPANY THROUGHOUT THE PROVINCE, HOWEVER, FAVOURS THE JURISDICTIONAL CLAIM OF THE LABOURERS.

14. THE IRONWORKERS SUBMIT THAT BY THE MEMORANDUM OF JUNE 12, 1964 THE LABOURERS RELINQUISHED ALL CLAIM TO JURISDICTION OVER THE ERECTION OF PRECAST ARCHITECTURAL WALL PANELS AND AGREED THAT THE WORK FELL WITHIN THE JURISDICTION OF THE IRONWORKERS. THE MEMORANDUM OF JUNE 12, 1964, ON ITS FACE, DEFINITELY FAVOURS THE JURISDICTION CLAIM OF THE IRONWORKERS. IT MUST BE REMEMBERED, HOWEVER, THAT THE MEMORANDUM WAS DESIGNED TO SETTLE THE CONFLICT BETWEEN THE WORK ASSIGNMENT BEING MADE BY SCHELL INDUSTRIES LIMITED IN THE LONDON AREA AND LOCAL CONTRACTORS IN OTHER AREAS, ON THE ONE HAND, AND THE WORK ASSIGNMENT BEING MADE BY THE TORONTO BASED COMPANIES IN LONDON AND OTHER AREAS, ON THE OTHER HAND, IN THE ERECTION OF FACIAL PANELS. ALTHOUGH REPRESENTATIVES OF ALL OF THE LOCALS OF THE LABOURERS UNION AND IRONWORKERS UNION IN ONTARIO SIGNED THE MEMORANDUM, THE AGREEMENT BETWEEN THE TWO TRADES IN THE LONDON AREA HAS BEEN LARGELY IGNORED. SCHELL INDUSTRIES LIMITED CONTINUED TO ASSIGN THE ERECTION WORK TO A COMPOSITE CREW OF LABOURERS AND IRONWORKERS AS IT HAD ALWAYS DONE PRIOR TO THE EXECUTION OF THE MEMORANDUM AND THE TORONTO BASED FIRMS CONTINUED TO ASSIGN THE ERECTION WORK TO THE LABOURERS AS THEY HAD ALWAYS DONE PRIOR TO THE AGREEMENT BETWEEN THE TWO TRADES. FURTHER, LONDON PRECAST PRODUCTS LIMITED, THE ONLY LONDON BASED COMPANY, WHICH HAS DONE A SUBSTANTIAL AMOUNT OF WORK IN THE ERECTION OF FACIAL PANELS SINCE THE MEMORANDUM OF JUNE 12, 1964 WAS SIGNED, HAS CONSISTENTLY ASSIGNED THE ERECTION WORK TO LABOURERS. THIS ASSIGNMENT IS COMPLETELY CONTRARY TO THE TERMS OF SETTLEMENT CONTAINED IN THE MEMORANDUM. IN VIEW OF THE LACK OF EFFECTIVENESS OF THE MEMORANDUM IN SETTLING THE JURISDICTIONAL DISPUTE CONFRONTING US, THE BOARD ITSELF CAN GIVE BUT LIMITED WEIGHT TO THE DOCUMENT.

15. WE ARE SATISFIED THAT BOTH IRONWORKERS AND LABOURERS ARE CAPABLE OF BEING TRAINED TO DO THE WORK INVOLVED IN THE ERECTION OF PRECAST ARCHITECTURAL WALL PANELS WITH EQUAL PROFICIENCY. IN THE INSTANT CASE, HOWEVER, LOCAL 506 HAS MADE AVAILABLE TO DUFFERIN PRECAST COMPANY LABOURERS WHO ARE SKILLED AND EXPERIENCED IN THE ERECTION OF FACIAL PANELS TO DO THE ERECTION WORK ON THE SOCIAL SCIENCE CENTRE PROJECT. IN THIS CIRCUMSTANCE, THE BOARD IS OF THE OPINION THAT IT IS MORE EFFICIENT AND ECONOMICAL FOR THE RESPONDENT COMPANY TO USE LABOURERS RATHER THAN A COMPOSITE CREW COMPOSED OF LABOURERS AND IRONWORKERS TO DO THE ERECTION WORK ON THE SAID PROJECT.

16. ACCORDINGLY, HAVING REGARD TO THE FACTORS OF ECONOMY AND EFFICIENCY AND THE FACT THAT THE PREDOMINANT CURRENT LONDON AREA PRACTICE AND THE RESPONDENT COMPANY'S OWN PAST PRACTICE AND PREFERENCE FAVOUR THE LABOURERS, THE BOARD DEEMS IT ADVISABLE IN THE PARTICULAR CIRCUMSTANCES OF THE INSTANT CASE TO MAKE THE FOLLOWING DIRECTION:

THE RESPONDENT, DUFFERIN PRECAST COMPANY, A DIVISION OF DUFFERIN MATERIALS & CONSTRUCTION LTD., SHALL ASSIGN ALL OF THE WORK INVOLVED IN THE UNLOADING, ERECTING AND FINISHING OF PRECAST ARCHITECTURAL WALL PANELS BEING USED ON THE SOCIAL SCIENCE CENTRE PROJECT AT THE UNIVERSITY OF WESTERN ONTARIO IN LONDON, INCLUDING THE RIGGING, HOOKING ON, SIGNALLING, LANDING, SHIMMING PLUMBING, ALIGNING, LEVELLING AND ANCHORING OF THE SAID PANELS, TO MEMBERS OF THE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCALS 506 AND 1059.

831-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. VIS-U-RAY LIMITED (RESPONDENT).

BEFORE: R.A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND H.F. IRWIN.

APPEARANCES AT THE HEARING: H.A. HERRON FOR THE APPLICANT; H.A. BERESFORD, ALAN WILLIAMSON AND KEITH BILLINGS FOR THE RESPONDENT.

DECISION OF R.A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBER H.F. IRWIN. NOVEMBER 10, 1971.

1. THE NAME "VIS-U-RAY LTD." APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "VIS-U-RAY LIMITED".

2. THIS IS AN APPLICATION FOR CERTIFICATION.

3. WE FIND THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

4. THE RESPONDENT ADOPTED THE POSITION THAT THE ONTARIO LABOUR RELATIONS BOARD WAS WITHOUT JURISDICTION TO ENTERTAIN THIS APPLICATION FOR CERTIFICATION BECAUSE THE EMPLOYEES AFFECTED BY THIS APPLICATION WERE EMPLOYED BY THE RESPONDENT AT THE BRUCE HEAVY WATER PLANT AT DOUGLAS POINT, ONTARIO. THE RESPONDENT SUBMITTED THAT, AS THE ABOVE NOTED WORK OR UNDERTAKING HAD BEEN DECLARED BY THE PARLIAMENT OF CANADA TO BE FOR THE GENERAL ADVANTAGE OF CANADA, AN APPLICATION FOR CERTIFICATION WITH RESPECT TO THE EMPLOYEES OUGHT PROPERLY TO BE MADE TO THE CANADA LABOUR RELATIONS BOARD.

5. IN THE ALTERNATIVE, THE RESPONDENT ADOPTED THE POSITION THAT IF THE ONTARIO LABOUR RELATIONS BOARD DID HAVE JURISDICTION

TO ENTERTAIN THIS APPLICATION, THE RESPONDENT DOES NOT CARRY ON A BUSINESS WITHIN THE CONSTRUCTION INDUSTRY AND THAT THIS APPLICATION WAS THEREFORE NOT PROPERLY MADE UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT.

6. AT THE HEARING IN THIS MATTER, THE BOARD ENTERTAINED THE SUBMISSIONS OF THE PARTIES CONCERNING THE NATURE OF THE WORK PERFORMED BY THE EMPLOYEES AFFECTED BY THIS APPLICATION AND THE QUESTIONS OF LAW IN RELATION TO THE RESPONDENT'S OPERATIONS AT DOUGLAS POINT.

7. THE EVIDENCE BEFORE THE BOARD ESTABLISHED THAT THE RESPONDENT WAS AT THE RELEVANT TIMES PERFORMING WORK AT THE BRUCE HEAVY WATER PLANT AT DOUGLAS POINT PURSUANT TO A CONTRACT BETWEEN ITSELF AND ATOMIC ENERGY OF CANADA LIMITED (HEREINAFTER REFERRED TO AS "AECL"). UNDER THE TERMS OF THIS CONTRACT THE RESPONDENT IS REQUIRED TO SUPPLY THE EQUIPMENT, SUPPLIES AND SERVICES OF PERSONNEL TO CARRY OUT THE NON-DESTRUCTIVE EXAMINATION OF THE WELDS IN THE PROCESS PIPING OF UNITS 1 AND 2 AT DOUGLAS POINT THROUGHOUT THE CONSTRUCTION PERIOD. IN ADDITION, THE RESPONDENT IS ALSO REQUIRED TO PERFORM SUCH SIMILAR EXAMINATIONS AND TESTS AS AECL MAY REQUEST. THE PLANT AT DOUGLAS POINT WILL PRODUCE HEAVY WATER WHEN COMPLETED. THE CHEMICAL NAME OF HEAVY WATER IS DEUTERIUM OXIDE.

8. THE NON-DESTRUCTIVE TESTING TECHNIQUE USED IN THIS PROJECT REQUIRES THE USE OF RADIOGRAPHY AND INVOLVES THE USE OF A RADIOACTIVE ISOTOPE. RADIOACTIVE RAYS ARE PROJECTED ON TO THE SURFACE TO BE TESTED AND A SHADOWGRAPH IS PRODUCED ON A PHOTOGRAPHIC PLANT WHICH HAS BEEN PLACED IN AN APPROPRIATE POSITION BEHIND THE SURFACE WHICH IS BEING TESTED. THE SOUNDNESS OR OTHERWISE OF THE SURFACE BEING TESTED IS THEN DETERMINED BY INTERPRETING THE IMAGE PRODUCED ON THE DEVELOPED FILM. THIS WORK IS PERFORMED UNDER THE DIRECTION OF THE RESPONDENT'S RADIOGRAPHERS WHO ARE GOVERNED BY AN ORDER RESPECTING INDUSTRIAL RADIOGRAPHY OPERATIONS (SOR/66-128) WHICH WAS MADE BY THE ATOMIC ENERGY CONTROL BOARD PURSUANT TO THE ATOMIC ENERGY CONTROL ACT (PRESENTLY R.S. 1970, c. A-19) AND THE ATOMIC ENERGY CONTROL REGULATIONS.

9. THE RESPONDENT RELIES UPON SECTIONS 91(29) AND 92(10) OF THE BRITISH NORTH AMERICA ACT. BY SECTION 92(10) THE LEGISLATURES OF EACH PROVINCE MAY EXCLUSIVELY MAKE LAWS IN RELATION TO:

10. LOCAL WORKS AND UNDERTAKINGS OTHER
THAN SUCH AS ARE OF THE FOLLOWING
CLASSES, -

- C. SUCH WORKS AS, ALTHOUGH WHOLLY SITUATE WITHIN THE PROVINCE, ARE BEFORE OR AFTER THEIR EXECUTION DECLARED BY THE PARLIAMENT OF CANADA TO BE FOR THE GENERAL ADVANTAGE OF CANADA OR FOR THE ADVANTAGE OF TWO OR MORE OF THE PROVINCES.

10. THE MATTERS CONTAINED IN SECTION 92(10)c, BY VIRTUE OF SECTION 91(29), COME WITHIN THE EXCLUSIVE LEGISLATIVE AUTHORITY OF THE PARLIAMENT OF CANADA. SECTION 17 OF THE ATOMIC ENERGY CONTROL ACT, R.S. 1970, c.A.-19 STATES:

17. ALL WORKS AND UNDERTAKINGS WHETHER HERETOFORE CONSTRUCTED OR HEREAFTER TO BE CONSTRUCTED,

- A) FOR THE PRODUCTION, USE AND APPLICATION OF ATOMIC ENERGY,
- B) FOR RESEARCH OR INVESTIGATION WITH RESPECT TO ATOMIC ENERGY, AND
- C) FOR THE PRODUCTION, REFINING OR TREATMENT OF PRESCRIBED SUBSTANCES, ARE AND EACH OF THEM IS DECLARED TO BE WORKS OR A WORK FOR THE GENERAL ADVANTAGE OF CANADA.

SECTION 2 OF THE SAME ACT STATES:

2. IN THIS ACT

....."PRESCRIBED SUBSTANCES" MEANS URANIUM, THORIUM, NEPTUNIUM, DEUTERIUM, THEIR RESPECTIVE DERIVATIVES AND COMPOUNDS AND ANY OTHER SUBSTANCES THAT THE BOARD MAY BY REGULATION DESIGNATE AS BEING CAPABLE OF RELEASING ATOMIC ENERGY, OR AS BEING REQUISITE FOR THE PRODUCTION, USE OR APPLICATION OF ATOMIC ENERGY.

HEAVY WATER OR DEUTERIUM OXIDE (D_2O) IS, OF COURSE, A COMPOUND OF DEUTERIUM.

11. IN OUR OPINION, THE WORDING OF SECTION 17 OF THE ATOMIC ENERGY CONTROL ACT IS WIDE ENOUGH TO INCLUDE THE WORK PERFORMED BY AECL. IN ADDITION, IN OUR VIEW, THE TEST APPLIED BY CULLITON, ACTING C.J.S., THAT "THE QUESTION THEN IS, DOES THE EVIDENCE ESTABLISH THAT THE WORK OF THE [RESPONDENT] COMPANY CONSTITUTES AN INTEGRAL PART OF, OR IS NECESSARILY INCIDENTAL TO THE WORK, UNDERTAKING OR BUSINESS OF [AECL]?" IN BACHMEIER DIAMOND AND PERCUSSION DRILLING CO. LTD. V. BEAVERLODGE DISTRICT OF MINE, MILL AND SMELTER WORKERS' LOCAL UNION NUMBER 913 (1962) 35 D.L.R. (2D) 241, AT P.243-4 IS APPROPRIATE TO THE FACTS OF THIS APPLICATION. SEE ALSO REFERENCE RE VALIDITY OF INDUSTRIAL RELATIONS AND DISPUTES INVESTIGATION ACT (CAN.) [1955] 3 D.L.R. 721, [1955] S.C.R. 529. WE FIND THAT THE WORK PERFORMED BY THE RESPONDENT FOR AECL AT DOUGLAS POINT CONSTITUTES AN INTEGRAL PART OF, OR IS NECESSARILY INCIDENTAL TO THE WORK, UNDERTAKING OR BUSINESS OF AECL.

12. WE THEREFORE FIND THAT THE RELATIONS BETWEEN THE RESPONDENT AND THE EMPLOYEES CONCERNED IN THIS APPLICATION, ON MATTERS COVERED BY THE LABOUR RELATIONS ACT, FALL OUTSIDE THE JURISDICTION OF THIS BOARD. SEE THE ROBERTSON-YATES CORPORATION LIMITED CASE, OLRB, M.R. OCT. 1962, P.215. WE THEREFORE FIND THAT WE ARE WITHOUT JURISDICTION TO DEAL WITH THE PRESENT APPLICATION. THIS PROCEEDING IS ACCORDINGLY TERMINATED.

DECISION OF BOARD MEMBER E. BOYER: NOVEMBER 10, 1971.

HAVING CONSIDERED THE CONTRACT BETWEEN THE RESPONDENT AND AECL AND IN PARTICULAR THE USE OF THE WORD "THROUGHOUT THE CONSTRUCTION PERIOD" USED THEREIN, I FIND THAT THE INSPECTION OF THE PIPES BY THE RESPONDENT IS PART AND PARCEL OF THE CONSTRUCTION PHASE AND THAT THE PRODUCTION OR USE OF HEAVY WATER WILL NOT BE COMMENCED UNTIL THE PLANT IS COMPLETED. ACCORDINGLY, I WOULD THEREFORE HAVE ENTERTAINED THIS APPLICATION.

932-71-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. ZEHR'S MARKETS LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: CLIFFORD EVANS AND H. JURCHUK FOR THE COMPLAINANT; J. P. BORDEN, HENRY POETKER AND PETER ERNST FOR THE RESPONDENT.

DECISION OF THE BOARD:

NOVEMBER 17, 1971.

1. THE NAME 'ZEHR'S MARKETS LTD.' APPEARING IN THE STYLE OF CAUSE OF THIS COMPLAINT AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: 'ZEHR'S MARKETS LIMITED'.
2. THIS IS A COMPLAINT UNDER SECTION 79 (FORMERLY SECTION 65) OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT COMPLAINS THAT FRED BUEHL HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTIONS 56 AND 58 (FORMERLY SECTIONS 48 AND 50) OF THE ACT.
3. THE UNION ALLEGES THAT FRED BUEHL WAS DISCHARGED BY THE RESPONDENT ON AUGUST 21, 1971 BECAUSE OF HIS ACTIVITIES IN ATTEMPTING TO ORGANIZE THE EMPLOYEES AS MEMBERS OF THE COMPLAINANT UNION. THE COMPLAINANT ASKS THAT BUEHL BE REINSTATED IN EMPLOYMENT WITH FULL COMPENSATION FOR WAGES AND BENEFITS LOST BY REASON OF HIS DISCHARGE.
4. THERE IS NO DISPUTE THAT BUEHL WAS AN EMPLOYEE OF THE RESPONDENT AND THAT HE WAS DISCHARGED ON AUGUST 21, 1971. HE WAS TOLD BY HENRY POETKER, MEAT MANAGER, THAT HIS SERVICES WERE NO LONGER REQUIRED.
5. THE COMPANY DENIES THAT BUEHL WAS DISCHARGED FOR UNION ACTIVITIES. IT SUBMITS THAT BUEHL WAS DISCHARGED BECAUSE OF HIS POOR PRODUCTION RECORD IN THE MEAT DEPARTMENT.
6. BUEHL HAS BEEN EMPLOYED BY THE RESPONDENT FOR APPROXIMATELY 22 MONTHS PRIOR TO HIS DISCHARGE ON AUGUST 21, 1971. HE TESTIFIED THAT DURING THAT PERIOD HE HAD HAD NO COMPLAINTS FROM MANAGEMENT WITH RESPECT TO HIS WORK. HE WAS HIRED AS A MEAT CUTTER UNTIL SOMETIME IN 1971 WHEN HE WAS PUT ON THE PRODUCTION LINE. THERE HE WAS CHARGED WITH THE PROCESSING OF MEAT TO BE FORMED INTO PRODUCTS KNOWN AS STEAKETTES AND PATTIES.
7. BUEHL WAS WORKING ON THIS LINE WHEN HE LEFT ON HIS VACATIONS WHICH RAN FROM JULY 5 TO JULY 17, 1971. DURING HIS ABSENCE, THE PRODUCTION LINE WORK WAS PERFORMED BY A PART-TIME EMPLOYEE. THE COMPANY INTRODUCED INTO EVIDENCE PRODUCTION RECORDS UPON WHICH THE EMPLOYEES RUNNING THE LINE ENTERED THE POUNDAGE OF MEAT PROCESSED EACH DAY. THE RECORDS INDICATE THAT THE REPLACEMENT EMPLOYEE PRODUCED CONSIDERABLY MORE STEAKETTES AND PATTIES ON AN AVERAGE THAN BUEHL IN THE MONTHS PRECEDING HIS HOLIDAYS. WITNESSES FOR MANAGEMENT, CONTRARY TO WHAT BUEHL ALLEGED, SAID THAT THEY HAD BEEN DISSATISFIED WITH HIS PRODUCTION PRIOR TO HIS HOLIDAYS AND HAD SPOKEN TO HIM SEVERAL TIMES ABOUT THE NEED FOR IMPROVEMENT.

8. THE PROBLEM FOR THE BOARD IS NOT TO DECIDE WHETHER THE COMPANY HAD JUST CAUSE TO DISMISS BUEHL BUT RATHER WHETHER THE COMPLAINANT HAS ESTABLISHED THAT THE TRUE REASON FOR THE DISCHARGE WAS THAT BUEHL WAS ATTEMPTING TO ENCOURAGE EMPLOYEES TO JOIN THE UNION. IN DECIDING THE ISSUE, THE REASONS ADVANCED BY THE COMPANY ARE, OF COURSE, OF GREAT IMPORTANCE.

9. BUEHL TESTIFIED THAT HE WAS A MEMBER OF THE COMPLAINANT UNION AND THAT HE HAD ATTEMPTED TO GET OTHER EMPLOYEES TO JOIN. HIS TESTIMONY WAS THAT AN ATTEMPT WAS MADE BY RON BIERSBACH TO ORGANIZE AN EMPLOYEES ASSOCIATION DURING A MEETING CALLED BY THE LATTER IN THE MEAT DEPARTMENT. IT WAS BUEHL'S EVIDENCE THAT BIERSBACH CALLED HIM OUT OF THE MEAT ROOM ALONG WITH SOME OTHER EMPLOYEES. BIERSBACH SUGGESTED THAT THE EMPLOYEES JOIN AN ASSOCIATION AND DISTRIBUTED MEMBERSHIP CARDS FOR SIGNATURE. BUEHL DID NOT SIGN. HE ASKED BIERSBACH WHY WOULD HE NOT GET THE REGULAR UNION IN. BUEHL SAID THAT BIERSBACH WAS ACTING ASSISTANT MANAGER AT THE TIME. THERE REMAINS A LARGE QUESTION, NOTWITHSTANDING THE TITLE, AS TO WHETHER AN ASSISTANT MEAT MANAGER EXERCISES ANY MANAGERIAL AUTHORITY IN THIS OPERATION. THE EVIDENCE IS SIGNIFICANT, HOWEVER, IN INDICATING BUEHL'S OPPOSITION TO THE EMPLOYEE ASSOCIATION AND HIS EXPRESS DESIRE TO GET A "REGULAR UNION" INTO THE SHOP.

10. THE UNION CALLED GEORGE BURCHATZKI TO TESTIFY. HE HAD BEEN AN EMPLOYEE OF THE RESPONDENT COMPANY AT THE TIME OF BUEHL'S DISCHARGE AND FOR SOME TIME AFTERWARDS. HE LEFT THE EMPLOY OF THE COMPANY OF HIS OWN VOLITION. HE HAD BEEN EMPLOYED AT VARIOUS STORES OF THE RESPONDENT. HE FILLED IN AT THE DIFFERENT STORES WHERE EMPLOYEES WERE ABSENT FOR ONE REASON OR ANOTHER. IN THE WEEK FOLLOWING BUEHL'S DISCHARGE BURCHATZKI WAS WORKING AT THE RESPONDENT'S PARKDALE STORE. HE WAS APPROACHED BY HENRY POETKER THE MEAT MANAGER OF THE BRIDGEPORT ROAD STORE WHERE BUEHL HAD WORKED. BURCHATZKI TOLD THE BOARD THAT POETKER APPROACHED HIM IN THE PARKING LOT OF THE PARKDALE STORE BEFORE STORE OPENING TIME ON THE MORNING OF AUGUST 25, 1971. HE SAID THAT POETKER ASKED HIM IF HE KNEW WHAT HE WAS DOING AND THAT HE, BURCHATZKI, WAS INTO SOME EXTRA-CURRICULAR ACTIVITIES. BURCHATZKI SAID THAT POETKER TOLD HIM HE HAD SEEN HIM WITH ONE OF THE UNION ORGANIZERS TALKING TO PEOPLE ABOUT JOINING THE UNION. HE SAID POETKER TOLD HIM HE SHOULD TRY TO GET OUT OF THIS THING BECAUSE THERE HAD BEEN PEOPLE FIRED FOR UNION ACTIVITY BEFORE - ADDING, ACCORDING TO BURCHATZKI, "YOU KNOW FRED AINT'T WITH THE COMPANY ANYMORE EITHER". HE TOLD BURCHATZKI THAT HE WAS A GOOD MAN AND WAS WANTED BACK AT THE STORE BUT THAT IF HE CONTINUED HIS UNION ACTIVITY HE WOULD BE FIRED. HE TOLD HIM TO THINK IT OVER AND THEN LEFT.

11. POETKER SAID, WITH RESPECT TO THE INCIDENT DESCRIBED ABOVE, THAT HE NORMALLY GOES TO WORK AT THE BRIDGEPORT STORE AT NINE O'CLOCK.

ON THE DAY IN QUESTION, HE PASSED THE BRIDGEPORT STORE AND PROCEEDED SOME TWO AND ONE HALF MILES PAST IT TO THE PARKING LOT OF THE PARK-DALE STORE. HE SAID HE DID THIS BECAUSE HE HAD NOT SEEN BURCHATZKI FOR A LONG TIME. HE SAID, HOWEVER, THAT HIS MAIN PURPOSE WAS TO ASK BURCHATZKI IF HE REALIZED WHAT HE WAS DOING IN HIS ACTIVITIES WITH THE UNION. POETKER DENIED THAT HE HAD SAID OTHER PEOPLE HAD BEEN FIRED FOR UNION ACTIVITY. HE TOLD BURCHATZKI THAT HE HAD SEEN HIM IN THE PARKING LOT WITH THE UNION ORGANIZERS.

12. POETKER STATED IN HIS EVIDENCE THAT HE HAD NOT KNOWN THAT BUEHL WAS A MEMBER OF THE UNION AT THE TIME HE WAS DISCHARGED. HE MAINTAINED THAT THE DISCHARGE, THE NEWS OF WHICH WAS CONVEYED BY POETKER TO BUEHL AT THE REQUEST OF PETER ERNST WHO IS THE HEAD OF THE RESPONDENT'S MEAT OPERATIONS, WAS BASED SOLELY UPON BUEHL'S PRODUCTION RECORD.

13. ERNST WAS CALLED BY THE RESPONDENT. HE TESTIFIED THAT HE HAD SPOKEN TO BUEHL MANY TIMES ABOUT HIS PRODUCTION AND HAD TOLD HIM HE COULD EARN MORE MONEY IF HE PRODUCED MORE. HE STATED THAT, AS THE RECORDS FILED SHOWED, BUEHL'S REPLACEMENT PROCESSED CONSIDERABLY MORE MEAT THAN THE LATTER DID. HE TESTIFIED THAT HE MADE THE DECISION TO FIRE BUEHL. HIS EVIDENCE IS THAT BUEHL WAS LET OUT ON AUGUST 21, 1971 BECAUSE HE WAS NOT PRODUCING AND WOULD NOT TRY TO PRODUCE MORE. HE DIRECTED POETKER TO TELL BUEHL THAT HE WAS FIRED. HE STATED THAT HE HAD LAST SPOKEN TO BUEHL IN JUNE SOME TIME - THAT HE HAD RETURNED FROM HOLIDAYS ON JULY 24 BUT HAD NOT SPOKEN TO BUEHL BETWEEN THAT DATE AND AUGUST 21ST. HE SAID HE HAD MADE UP HIS MIND BEFORE THEN THAT HE WAS GOING TO DISCHARGE BUEHL.

14. THERE IS NO DISPUTE THAT BUEHL DID NOT WORK ON THE PRODUCTION LINE AFTER HIS RETURN FROM HIS VACATIONS ON JULY 17, 1971. HE CONTINUES IN THE EMPLOYMENT OF THE RESPONDENT, WORKING ON THE CUTTING BLOCK, FOR A FULL MONTH FOLLOWING HIS VACATIONS. HE WAS NOT ON THE PRODUCTION LINE WHEN HE WAS DISMISSED SO THAT ERNST'S EVIDENCE THAT HE WAS DISCHARGED ON AUGUST 21, 1971 FOR REFUSING TO PRODUCE MORE IS DIFFICULT TO ACCEPT IN THE CIRCUMSTANCES.

15. THERE WAS EVIDENCE FROM POETKER THAT BUEHL WAS PUT TO WORK ON THE CUTTING BLOCK AFTER HIS HOLIDAYS FOR THE CONVENIENCE OF THE COMPANY DURING THE VACATION PERIOD. THE DISMISSAL, ON THE OTHER HAND, WAS INSTANTANEOUS WITH PAYMENT OF A WEEK'S WAGES IN LIEU OF NOTICE, NOTWITHSTANDING THE EVIDENCE OF ERNST THAT THE DECISION TO DISCHARGE BUEHL HAD BEEN MADE MUCH EARLIER THAN AUGUST 21ST.

16. THE ONUS IS UPON THE COMPLAINANT IN THESE CASES TO ESTABLISH ITS CASE UPON THE BALANCE OF PROBABILITIES. IN OUR OPINION, THE BALANCE OF PROBABILITIES IN THE PRESENT CASE IS CLEARLY TILTED

IN FAVOUR OF THE COMPLAINANT BY THAT PART OF THE EVIDENCE DEALING WITH THE MEETING OF POETKER AND BURCHATZKI WHICH WAS SOUGHT OUT BY POETKER. POETKER DOES NOT DENY THAT HE WARNED BURCHATZKI AND ASKED HIM IF HE REALIZED WHAT HE WAS DOING IN PROMOTING THE UNION. POETKER WAS THE MAN WHO WAS GIVEN THE TASK, AFTER CONSULTATION WITH ERNST, OF TELLING BUEHL THAT HE WAS TERMINATED. HE WAS AWARE OF UNION ACTIVITY AND OF THE IDENTITY OF THE UNION ORGANIZERS. WE ACCEPT BURCHATZKI'S EVIDENCE THAT POETKER IN FACT DIRECTED HIS ATTENTION TO WHAT HAPPENED TO BUEHL WITH THE CLEAR IMPLICATION THAT UNION PROMOTIONAL ACTIVITIES CAUSED HIS DISCHARGE.

17. TAKING ALL OF THE FOREGOING, TOGETHER WITH BUEHL'S TESTIMONY WITH RESPECT TO HIS EXPRESSED DESIRE FOR A "REGULAR UNION" AND WITH HIS ATTEMPTS TO PERSUADE OTHER EMPLOYEES TO JOIN THE UNION AND ALL OF THE OTHER EVIDENCE HEARD, WE FIND THAT THE TRUE REASON FOR THE DISCHARGE OF BUEHL WAS NOT THAT HIS PRODUCTION RECORD WAS CONSIDERED POOR, BUT THE FACT THAT HE WAS ATTEMPTING TO PROMOTE THE UNION. THE TERMINATION OF FRED BUEHL, THEREFORE, AMOUNTS TO A VIOLATION OF THE LABOUR RELATIONS ACT.

18. WE, ACCORDINGLY, DIRECT THAT FRED BUEHL BE REINSTATED IN EMPLOYMENT IN THE SAME OR A LIKE POSITION THERETO AS HE HELD ON THE DATE OF HIS DISCHARGE WITH FULL COMPENSATION OF ALL EARNINGS LOST BY REASON OF THE DISCHARGE. IF THE PARTIES ARE UNABLE TO AGREE AS TO THE AMOUNT OF LOSS OF EARNINGS OF BUEHL, BETWEEN THE DATE OF HIS DISCHARGE AND THE DATE OF HIS REINSTATEMENT WITHIN 14 DAYS HEREOF, THE BOARD, AT THE REQUEST OF EITHER PARTY, WILL GIVE THE PARTIES AN OPPORTUNITY TO PRESENT EVIDENCE AND MAKE SUBMISSIONS WITH RESPECT THERETO AND THE BOARD WILL THEN DETERMINE THE AMOUNT OF LOSS OF EARNINGS DUE.

1121-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. SWINGLINE OF CANADA LTD. (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND F. W. MURRAY.

DECISION OF THE BOARD: NOVEMBER 4, 1971.

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2. THE APPLICANT HAS REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN.

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10. THE RESPONDENT TOOK THE POSITION THAT THE APPLICATION SHOULD BE DISMISSED ON THE GROUNDS OF TIMELINESS SINCE A SISTER LOCAL OF THE APPLICANT HAD MADE AN EARLIER APPLICATION TO BE CERTIFIED AS BARGAINING AGENT FOR THE SAME EMPLOYEES WITH WHOM WE ARE HERE CONCERNED AND THAT EARLIER APPLICATION WAS DISMISSED FOLLOWING THE TAKING OF A REPRESENTATION VOTE WHICH WAS HELD THREE MONTHS PRIOR TO THE MAKING OF THE INSTANT APPLICATION. A BAR WAS PLACED ON THE SISTER LOCAL FOR A PERIOD OF SIX MONTHS IN ACCORDANCE WITH THE BOARD'S USUAL PRACTICE. SINCE THE APPLICANT IS A SEPARATE ENTITY FROM THE UNION THAT WAS DISMISSED IN THE EARLIER APPLICATION AND SINCE THE APPLICANT'S MEMBERSHIP EVIDENCE IS SEPARATE AND DISTINCT FROM THE EVIDENCE OF MEMBERSHIP WHICH WAS FILED BY THE SISTER LOCAL IN THE EARLIER APPLICATION AND AGAIN SINCE THE APPLICANT WAS NOT A PARTY TO THE EARLIER APPLICATION AND NO ORDER WAS MADE IN THE EARLIER APPLICATION BARRING THE APPLICANT IN THIS MATTER, FOR THE REASONS GIVEN IN THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO CASE, OLRB MONTHLY REPORT, NOVEMBER 1966, P. 596; THE AMERICAN STANDARD PRODUCTS (CANADA) LIMITED CASE, OLRB MONTHLY REPORT, FEBRUARY 1965, P. 590; THE MILSOM FLOORS LIMITED CASE, OLRB MONTHLY REPORT, SEPTEMBER 1966, BOARD FILE NO. 12166-66-R; AND THE HYDRO-ELECTRIC COMMISSION OF THE CITY OF HAMILTON CASE, (1962) CLLC 1119, THE BOARD IS NOT PREPARED TO FIND THAT THE APPLICANT IN THIS MATTER IS BOUND BY THE BAR PLACED BY THE BOARD ON ITS SISTER LOCAL OR THAT THE INSTANT APPLICATION IS UNTIMELY.

11. THE RESPONDENT HAS ALSO OBJECTED TO THE APPLICANT'S CHOICE OF MR. QUINN TO ACT AS A SCRUTINEER FOR THE APPLICANT AT THE PRE-HEARING REPRESENTATION VOTE IN THIS MATTER. THE CHOICE OF A SCRUTINEER TO REPRESENT THE PARTIES ON THE TAKING OF A REPRESENTATION VOTE IS NOT A MATTER OVER WHICH THE BOARD EXERCISES CONTROL. IT SHOULD BE POINTED OUT, HOWEVER, THAT THE CHOICE OF A SCRUTINEER MAY GIVE RISE TO A SUBSEQUENT CHALLENGE WITH RESPECT TO THE CONDUCT OF A VOTE AND THE PARTIES SHOULD, IN ACCORDANCE WITH THE REGISTRAR'S DIRECTION, ATTEMPT TO CHOOSE A RANK-AND-FILE EMPLOYEE WHOSE PRESENCE AT THE POLLING STATION WOULD NOT ADVERSELY AFFECT THE EXERCISE OF AN EMPLOYEE'S FREE CHOICE IN THE REPRESENTATION VOTE. IF THERE IS EVIDENCE THAT MR. QUINN'S PRESENCE AT THE POLL DURING THE TAKING OF THE VOTE ADVERSELY AFFECTED THE ABILITY OF THE VOTERS TO EXPRESS THEIR TRUE WISHES, ALLEGATIONS CAN BE MADE WITH RESPECT TO THE MATTER FOLLOWING THE TAKING OF THE VOTE. THE BOARD IS NOT PREPARED TO ISSUE ANY DIRECTION WITH RESPECT TO THE CHOICE OF SCRUTINEERS BY THE PARTIES AT THIS STAGE.

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14. THE MATTER IS REFERRED TO THE REGISTRAR.

455-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183, (ROCK AND TUNNEL WORKERS DIVISION) (APPLICANT) v. INDUSTRIAL-MINE INSTALLATIONS LIMITED AND I.M.I. UNDERGROUND CONTRACTORS LIMITED (RESPONDENTS).

BEFORE: R.A. FURNESS, VICE CHAIRMAN AND BOARD MEMBERS E. BOYER AND F.W. MURRAY.

APPEARANCES AT THE HEARING: R. KOSKIE FOR THE APPLICANT; JOHN O'DONOGHUE FOR THE RESPONDENTS.

DECISION OF THE BOARD: NOVEMBER 2, 1971.

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4. IT IS THE CONTENTION OF THE APPLICANT THAT THE TWO NAMED RESPONDENTS FALL WITHIN THE PURVIEW OF SECTION 1(4) OF THE LABOUR RELATIONS ACT, WHICH READS:

"WHERE, IN THE OPINION OF THE BOARD, ASSOCIATED OR RELATED ACTIVITIES OR BUSINESSES ARE CARRIED ON BY OR THROUGH MORE THAN ONE CORPORATION, INDIVIDUAL, FIRM, SYNDICATE OR ASSOCIATION, OR ANY COMBINATION THEREOF, UNDER COMMON CONTROL OR DIRECTION, THE BOARD MAY TREAT THE CORPORATIONS, INDIVIDUALS, FIRMS, SYNDICATES OR ASSOCIATIONS OR ANY COMBINATION THEREOF AS CONSTITUTING ONE EMPLOYER FOR THE PURPOSES OF THIS ACT."

5. AT THE HEARING, THE PARTIES AGREED TO THE FOLLOWING FACTS WITH RESPECT TO THE TWO NAMED RESPONDENTS:

- i) THE RESPONDENTS OCCUPY THE SAME OFFICE AND HAVE COMMON OFFICE FACILITIES AND STAFF,
- ii) THE RESPONDENTS HAVE THE SAME SOLICITORS,
- iii) THE ADMINISTRATION OF BOTH RESPONDENTS IS THE SAME,
- iv) THERE IS COMMON MANAGEMENT OF BOTH RESPONDENTS,

- v) THE DIRECTORS AND OFFICERS OF BOTH RESPONDENTS ARE THE SAME,
- vi) THE LABOUR RELATIONS AND PERSONNEL POLICIES OF THE RESPONDENTS ARE UNDER THE CONTROL OF A PERSON OR PERSONS WHO ARE COMMON TO BOTH RESPONDENTS,
- vii) WITH RESPECT TO THE JOBS AFFECTED BY THIS APPLICATION THE SAME TYPE OF WORK IS PERFORMED BY THE EMPLOYEES OF BOTH RESPONDENTS,
- viii) THERE IS A COMMON SUPERVISOR OF THE EMPLOYEES OF THE RESPONDENTS ON ALL OF THE JOBS AFFECTED BY THIS APPLICATION,
- ix) THE EMPLOYEES OF BOTH RESPONDENTS ARE PAID BY CHEQUE FROM I.M.I. UNDERGROUND CONTRACTORS LIMITED. HOWEVER, THE EMPLOYEES OF INDUSTRIAL-MINE INSTALLATIONS LIMITED HAVE THE NAME OF THE LATTER IMPRINTED ON THEIR DEDUCTION SLIPS, AND
- x) THERE IS SOME INTERCHANGE OF EMPLOYEES BETWEEN THE TWO RESPONDENTS.

6. HAVING REGARD TO THE FOREGOING AGREED FACTS, TO THE REPRESENTATIONS OF THE PARTIES AND TO THE PRINCIPLES ENUNCIATED BY THE BOARD IN THE WALTERS LITHOGRAPHING COMPANY LIMITED CASE, [1971] OLRB REP. 406, THE BOARD FINDS THAT THE RESPONDENTS CARRY ON ASSOCIATED OR RELATED ACTIVITIES OR BUSINESSES AND THAT THE RESPONDENTS ARE UNDER COMMON CONTROL OR DIRECTION WITHIN THE MEANING OF SECTION 1(4) OF THE LABOUR RELATIONS ACT. THE BOARD ACCORDINGLY DETERMINES THAT THE RESPONDENTS HEREIN BE TREATED AS ONE EMPLOYER FOR THE PURPOSES OF THE LABOUR RELATIONS ACT.

7. THE APPLICANT AND THE RESPONDENT HAVE CLAIMED THAT THE UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING OUGHT TO BE DESCRIBED AS:

"ALL EMPLOYEES WORKING FOR THE COMPANIES WITHIN A 35-MILE RADIUS OF THE SUDBURY, ONTARIO, FEDERAL BUILDING SAVE AND EXCEPT SHIFT BOSSES, MINE CAPTAINS, SUPER-INTENDENTS, MASTER MECHANICS, ELECTRICAL

FOREMEN, MECHANICAL FOREMEN, GENERAL FOREMEN AND PERSONS ABOVE THOSE RANKS AND ENGINEERING STAFF, OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS AND ALL PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK".

8. IT IS NOT THE PRACTICE OF THE BOARD IN APPLICATIONS FOR CERTIFICATION FILED UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT TO EXCLUDE EITHER STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD OR PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK FROM AN APPROPRIATE BARGAINING UNIT. THE PARTIES HAVE PROPOSED A BARGAINING UNIT OF ALL EMPLOYEES WITH CERTAIN EXCEPTIONS REFERRED TO IN PARAGRAPH 7. AS THE BOARD STATED IN THE WINTER & SON CASE OLRB M.R. FEBRUARY 1967 P.889, 890:

"....THE BOARD HAS EXPRESSED CONCERN ABOUT BARGAINING UNITS OF CONSTRUCTION EMPLOYEES BEING ALL INCLUSIVE, AS THEY ARE WHEN DESCRIBED IN TERMS OF "ALL EMPLOYEES". SEE FOR EXAMPLE: MANNIX CO. LTD., O.L.R.B. MONTHLY REPORT, JANUARY, 1965, P.526 AND A.K. PENNER & SONS LTD., O.L.R.B. MONTHLY REPORT, OCTOBER, 1966, P.493. SUCH UNITS MAY WELL LEAD TO JURISDICTIONAL DISPUTES PARTICULARLY WHERE ONLY ONE OR TWO TRADES ARE EMPLOYED AT THE DATE OF THE MAKING OF THE APPLICATION OR WHERE AN EMPLOYER DECIDES TO EXPAND THE SCOPE OF HIS BUSINESS. WE HAVE THEREFORE COME TO THE CONCLUSION THAT, AS A GENERAL RULE, UNRESTRICTED ALL EMPLOYEE UNITS SHOULD BE AVOIDED IN CONSTRUCTION INDUSTRY CASES. RATHER, IN OUR VIEW, WHERE A UNION SEEKS A UNIT, OTHER THAN A CRAFT UNIT, THAT UNIT SHOULD BE DESCRIBED IN TERMS OF THE TRADES ON THE JOB AT THE DATE OF THE MAKING OF THE APPLICATION."

9. ON THE DATE OF THE MAKING OF THIS APPLICATION FOR CERTIFICATION, THE RESPONDENTS HAD THE FOLLOWING TRADES AND CLASSIFICATIONS AT WORK ON THE JOBS AFFECTED BY THIS APPLICATION - CARPENTERS, RIGGERS, DRYMEN, LEADERS, WELDERS, MINERS, A MILLWRIGHT AND A HOISTMAN.

10. IN THE LIGHT OF THE FOREGOING AND HAVING REGARD TO THE PROVISIONS OF SECTION 6(1) OF THE LABOUR RELATIONS ACT, THE BOARD FURTHER FINDS THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES; ALL IRONWORKERS; ALL MILLWRIGHTS AND MILLWRIGHTS' APPRENTICES; ALL DRY-MEN, LEADERS, WELDERS, MINERS AND HOISTMEN IN THE EMPLOY OF THE RESPONDENTS IN THEIR CONSTRUCTION OPERATIONS WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENTS APPROPRIATE FOR COLLECTIVE BARGAINING.

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1005-71-R: PARNELL FOODS LIMITED (TORONTO DIVISION) (APPLICANT) v. LOCAL 908, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL:CIO:CLC (RESPONDENT) v. RETAIL CLERKS INTERNATIONAL ASSOCIATION (INTERVENER #1) v. CERTAIN EMPLOYEES (INTERVENER #2).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS P. J. O'KEEFFE AND H. F. IRWIN.

APPEARANCES AT THE HEARING: T. F. STORIE, J. R. CORBETT AND D. W. MCINTOSH FOR THE APPLICANT; E. ROVET AND LEN COLLINS FOR THE RESPONDENT AND INTERVENER #2; J. A. RYDER AND JACK LEWIS FOR INTERVENER #1.

DECISION OF THE BOARD: NOVEMBER 12, 1971.

1. THE APPLICANT HAS APPLIED TO THE ONTARIO LABOUR RELATIONS BOARD FOR A DECLARATION UNDER SECTION 55 (FORMERLY SECTION 47(A)) OF THE ACT WITH RESPECT TO THE STATUS OF BARGAINING RIGHTS COVERING CERTAIN OF ITS EMPLOYEES.

2. THE FACTS UNDERLYING THE APPLICATION ARE AS FOLLOWS:

(A) THE APPLICANT IS CURRENTLY PARTY TO A COLLECTIVE AGREEMENT WITH LOCAL 908, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL:CIO:CLC, WHICH AGREEMENT EXPIRES THE 5TH DAY OF APRIL, 1973.

(B) THE AGREEMENT PROVIDES IN ARTICLE II THAT THE UNION IS THE SOLE AND EXCLUSIVE BARGAINING AGENT FOR "ALL VENDING, CAFETERIA AND COMMISSARY EMPLOYEES OF PARNELL FOODS

LIMITED IN METROPOLITAN TORONTO AND CHINQUACOUSY TOWNSHIP, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD.

- (c) NAVCO FOOD SERVICES LIMITED (HEREINAFTER CALLED "NAVCO") DEFAULTED UNDER THE PROVISIONS OF CERTAIN DEBENTURES GIVEN IN FAVOUR OF TRADERS GROUP LIMITED AND BY VIRTUE OF SUCH DEFAULT TRADERS ACQUIRED TITLE TO THE ASSETS, PROPERTY AND BUSINESS OF NAVCO. FOLLOWING SUCH DEFAULT, AN ORDER WAS MADE ON JANUARY 22, 1971 APPOINTING THE CLARKSON COMPANY LIMITED AS INTERIM RECEIVER OF THE PROPERTY OF NAVCO.
- (d) ON OR ABOUT THE 6TH DAY OF AUGUST, 1971, THE APPLICANT ENTERED AN AGREEMENT WITH THE CLARKSON COMPANY LIMITED (AS VENDOR) AND TRADERS GROUP LIMITED FOR THE PURCHASE OF ALL ASSETS, PROPERTY AND BUSINESS USED EXCLUSIVELY IN CONNECTION WITH THE OPERATIONS OF THE TORONTO BRANCH OF NAVCO.
- (e) IN ADDITION, THE APPLICANT AGREED TO, AND IN FACT DID, OFFER EMPLOYMENT TO CERTAIN EMPLOYEES OF THE VENDOR EFFECTIVE ON OR ABOUT THE 9TH DAY OF AUGUST, 1971 AND THE APPLICANT IS NOW THE EMPLOYER OF SUCH PERSONS.
- (f) THESE PERSONS HAVE BEEN INTERMINGLING WITH OTHER EMPLOYEES OF THE APPLICANT COVERED UNDER THE COLLECTIVE AGREEMENT WITH LOCAL 908, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL:CIO:CLC, AND ARE PERFORMING SUBSTANTIALLY THE SAME OR SIMILAR WORK FOR THE APPLICANT IN METROPOLITAN TORONTO.
- (g) THE PERSONS ACCEPTING EMPLOYMENT FROM THE 9TH DAY OF AUGUST, 1971 WERE FORMERLY EMPLOYED BY NAVCO. THAT COMPANY (FORMERLY

NATIONAL AUTOMATIC VENDING COMPANY LIMITED) WAS A PARTY TO A COLLECTIVE AGREEMENT WITH AUTOMATIC VENDING EMPLOYEES UNION DATED APRIL 16, 1969 AND CONTINUING IN EFFECT UNTIL DECEMBER 31, 1971. THAT AGREEMENT RECOGNIZED THE UNION AS SOLE AND EXCLUSIVE BARGAINING AGENT OF "ALL EMPLOYEES OF THE COMPANY IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, NEW EMPLOYEES DURING THE PROBATION PERIOD PROVIDED IN ARTICLE 10, AND STUDENTS EMPLOYED DURING THEIR SUMMER VACATION".

- (H) SUBSEQUENTLY, RETAIL CLERKS INTERNATIONAL ASSOCIATION APPLIED FOR A DECLARATION OF SUCCESSOR RIGHTS UNDER SECTION 47(1) OF THE LABOUR RELATIONS ACT. THAT DECLARATION WAS OBTAINED IN A DECISION OF THE BOARD DATED JUNE 14, 1971 (BOARD FILE NO. 331-71-R) WHICH FOUND THAT THE APPLICANT UNION HAD ACQUIRED THE RIGHTS PRIVILEGES AND DUTIES OF AUTOMATIC VENDING EMPLOYEES UNION UNDER A COLLECTIVE AGREEMENT WITH NAVCO (FORMERLY NATIONAL AUTOMATIC VENDING COMPANY LIMITED).

3. IT IS CLEAR FROM THE EVIDENCE THAT A PORTION OF THE BUSINESS, FORMERLY CARRIED ON BY NAVCO FOOD SERVICES LIMITED, CONTINUED AS A GOING CONCERN THROUGHOUT THE RECEIVERSHIP PROCEEDINGS AND ITS ULTIMATE TRANSFER TO PARNELL FOODS LIMITED.

4. IT IS TO BE NOTED THAT SECTION 55 SUBSECTION (1) PROVIDES:

55. (1) IN THIS SECTION,

- (A) "BUSINESS" INCLUDES A PART OR PARTS THEREOF;
- (B) "SELLS" INCLUDES LEASES, TRANSFERS AND ANY OTHER MANNER OF DISPOSITION AND "SOLD" AND "SCALE" HAVE CORRESPONDING MEANINGS.

5. HAVING REGARD TO ALL OF THE FOREGOING AND PURSUANT TO THE PROVISIONS OF SECTION 55(12), THE BOARD DETERMINES THAT THE TRANSACTIONS CARRIED ON UNDER THE RECEIVERSHIP CONSTITUTE A SALE WITHIN THE

MEANING OF SECTION 55(1) OF PART OF THE BUSINESS FORMERLY CARRIED ON BY NAVCO FOOD SERVICES LIMITED TO PARNELL FOODS LIMITED.

6. THERE WAS AGREEMENT BETWEEN THE PARTIES THAT THERE HAS BEEN AN INTERMINGLING OF THE EMPLOYEES OF PARNELL FOODS LIMITED AND THOSE PERSONS FORMERLY EMPLOYED BY NAVCO FOOD SERVICES LIMITED AND THE RECEIVER.

7. PURSUANT TO THE PROVISIONS OF SECTION 55(8) THE BOARD CONSIDERS IT APPROPRIATE TO HOLD A REPRESENTATION VOTE IN A VOTING CONSTITUENCY COMPRISING:

"ALL EMPLOYEES OF PARNELL FOODS LIMITED COVERED BY THE COLLECTIVE AGREEMENT MADE BETWEEN NAVCO FOOD SERVICES LIMITED (FORMERLY NATIONAL AUTOMATIC VENDING COMPANY LIMITED) AND AUTOMATIC VENDING EMPLOYEES UNION, DATED APRIL 16, 1969, THE RIGHTS, PRIVILEGES AND DUTIES OF WHICH WERE ACQUIRED BY RETAIL CLERKS INTERNATIONAL ASSOCIATION BY DECLARATION OF THE BOARD DATED JUNE 14, 1971 AND BY THE COLLECTIVE AGREEMENT BETWEEN PARNELL FOODS LIMITED AND LOCAL 908, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL:CIO:CLC, WHICH EXPIRES ON THE 5TH DAY OF APRIL, 1973".

8. ALL EMPLOYEES OF THE APPLICANT IN THE VOTING CONSTITUENCY ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

9. VOTERS WILL BE GIVEN A CHOICE BETWEEN LOCAL 908, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL:CIO:CLC, AND RETAIL CLERKS INTERNATIONAL ASSOCIATION.

10. THE MATTER IS REFERRED TO THE REGISTRAR.

106-70-JD: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 607 (COMPLAINANT) v. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 628 AND CANADIAN INTERNATIONAL COMSTOCK COMPANY LIMITED (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

DECISION OF THE BOARD:

NOVEMBER 19, 1971.

THE LAST SENTENCE OF PARAGRAPH 15 OF THE BOARD'S DECISION DATED AUGUST 17, 1971 IS DELETED AND THE FOLLOWING SENTENCE SUBSTITUTED THEREFOR:

PAST PRACTICE, THEN, IN THE INSTALLATION OF
FRP PIPING SUPPORTS THE JURISDICTIONAL CLAIM
OF THE PIPEFITTERS.

452-71-R: THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION (APPLICANT) v. THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION NUMBER 721 (RESPONDENT) v. THE ONTARIO ERECTORS ASSOCIATION (INTERVENER #1) v. HEAVY CONSTRUCTION ASSOCIATION OF TORONTO (INTERVENER #2).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN AND BOARD MEMBERS E. BOYER AND F.W. MURRAY.

DECISION OF THE BOARD:

NOVEMBER 25, 1971.

1. THIS IS AN APPLICATION FOR ACCREDITATION OF AN EMPLOYERS' ORGANIZATION UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT. THE RESPONDENT TRADE UNION HAS ENTERED INTO A COLLECTIVE AGREEMENT WITH "THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION AND SIGNATORY REINFORCING STEEL CONTRACTORS, MEMBERS OF THE ASSOCIATION" DATED JUNE 17, 1970. THIS AGREEMENT HAS BEEN SIGNED BY A NUMBER OF INDIVIDUAL EMPLOYERS. THE BOARD THEREFORE FINDS THAT IT HAS THE JURISDICTION UNDER SECTION 113 OF THE ACT TO ENTERTAIN THIS APPLICATION.

2. AS PART OF ITS APPLICATION, THE APPLICANT SUBMITTED A DECLARATION BY ITS DIRECTOR OF INDUSTRIAL RELATIONS, THAT IT IS AN EMPLOYERS' ORGANIZATION THAT REPRESENTS EMPLOYERS WHO OPERATE BUSINESSES IN THE CONSTRUCTION INDUSTRY. THE APPLICANT IS A CORPORATION. IT HAS FILED WITH ITS APPLICATION TRUE COPIES, UNDER THE SEAL OF THE CORPORATION AND CERTIFIED BY THE EXECUTIVE DIRECTOR OF THE CORPORATION, VARIOUS LETTERS PATENT, SUPPLEMENTARY LETTERS PATENT AND BY-LAW NUMBER 1 NEW SERIES OF THE TORONTO CONSTRUCTION ASSOCIATION. BY SUPPLEMENTARY LETTERS PATENT GRANTED ON THE FIFTH DAY OF FEBRUARY, 1971, BY THE MINISTER OF FINANCIAL AND COMMERCIAL AFFAIRS, THE OBJECTS OF THE APPLICANT CORPORATION WERE VARIED TO INCLUDE THE POWER "TO BECOME AN ACCREDITED EMPLOYERS' BARGAINING AGENT EITHER ALONE OR JOINTLY WITH OTHER ASSOCIATIONS OR ORGANIZATIONS UNDER THE LABOUR RELATIONS ACT OR ANY LEGISLATION SUBSTITUTED THEREFOR OR SIMILAR THERETO AS AMENDED FROM TIME TO TIME AND TO REGULATE

RELATIONS BETWEEN EMPLOYERS AND EMPLOYEES IN THE CONSTRUCTION INDUSTRY AND REPRESENT SUCH EMPLOYERS IN COLLECTIVE BARGAINING WITHIN ANY SECTOR OF THE CONSTRUCTION INDUSTRY IN ANY GEOGRAPHICAL AREAS AS DEFINED UNDER THE LABOUR RELATIONS ACT WHICH IS COMPOSED IN WHOLE OR PART OF THE SAID MUNICIPALITY OF METROPOLITAN TORONTO GEOGRAPHIC AREA." THE BY-LAW FILED WITH THE BOARD COVERS MANY ASPECTS OF THE APPLICANT'S AFFAIRS AND IN PARTICULAR, IN SECTION 42 AUTHORIZES THE ASSOCIATION TO MAKE APPLICATION FOR CERTIFICATES OF ACCREDITATION FOR ANY GEOGRAPHIC AREA WHICH INCLUDES ALL OR ANY PART OF THE MUNICIPALITY OF METROPOLITAN TORONTO GEOGRAPHIC AREA FOR ANY PARTICULAR SECTOR OR SECTORS OF THE CONSTRUCTION INDUSTRY AND "EACH MEMBER OF THE ASSOCIATION OR A SECTION OR SUB-SECTION THEREOF WHO IS AFFECTED BY ANY SUCH APPLICATION BY ONE OF THEM OF WHICH THE MEMBER IS A MEMBER SHALL BE DEEMED TO HAVE AUTHORIZED SUCH APPLICATION ON ITS OR HIS BEHALF." ON THE BASIS OF ALL THE EVIDENCE, THE BOARD IS SATISFIED THAT THE APPLICANT EMPLOYERS' ORGANIZATION IS AN EMPLOYERS' ORGANIZATION WITHIN THE MEANING OF SECTION 106(D) OF THE ACT AND THAT IT IS A PROPERLY CONSTITUTED ORGANIZATION FOR THE PURPOSES OF SECTION 115(3) OF THE ACT.

3. THE APPLICANT ALSO FILED IN SUPPORT OF ITS APPLICATION 113 DOCUMENTS ENTITLED "EMPLOYER AUTHORIZATION" SIGNED BY VARIOUS EMPLOYERS. IN ADDITION, THERE WAS FILED WITH THE APPLICATION AS "SCHEDULE 'A'" A LIST OF ONE HUNDRED AND SEVENTEEN (117) EMPLOYERS. THIS LIST WAS CERTIFIED UNDER THE SEAL OF THE CORPORATION BY A DIRECTOR OF THE ASSOCIATION TO BE A LIST OF EMPLOYERS WHO WERE MEMBERS IN GOOD STANDING OF THE ASSOCIATION, AS OF MAY 18, 1971. HOWEVER, "EMPLOYER AUTHORIZATIONS" WERE NOT SUBMITTED FOR ALL THE EMPLOYERS LISTED ON THIS "SCHEDULE 'A'" AND CONVERSELY, EMPLOYER AUTHORIZATIONS WERE SUBMITTED ON BEHALF OF OTHER EMPLOYERS NOT LISTED ON THE "SCHEDULE 'A'" (THESE EMPLOYERS WERE LISTED ON "SCHEDULE 'B'" FILED WITH THE APPLICATION). TWO OF THE "EMPLOYER AUTHORIZATIONS" SUBMITTED RELATED TO A TRADE UNION OTHER THAN THE RESPONDENT AND SEVEN OF THE "EMPLOYER AUTHORIZATIONS" ALTHOUGH SIGNED BEAR NO DATES. THE BOARD THEREFORE FINDS THAT THE APPLICANT HAS SUBMITTED ACCEPTABLE EVIDENCE OF REPRESENTATION IN ACCORDANCE WITH SECTION 96 OF THE BOARD'S RULES OF PROCEDURE ON BEHALF OF ONE HUNDRED AND FOUR (104) EMPLOYERS.

4. AN EXAMINATION OF THE EVIDENCE OF REPRESENTATION SUBMITTED BY THE APPLICANT, TOGETHER WITH THE BY-LAW NUMBER 1 NEW SERIES FILED WITH THE APPLICATION, INDICATES THAT FOR MEMBERS OF THE ASSOCIATION THERE HAS BEEN SUFFICIENT VESTING OF AUTHORITY IN THE APPLICANT EMPLOYERS' ORGANIZATION TO ENABLE IT TO DISCHARGE THE RESPONSIBILITIES OF AN ACCREDITED EMPLOYERS' ORGANIZATION. WITH RESPECT TO THOSE EMPLOYERS FOR WHOM THERE IS NO EVIDENCE THAT THEY ARE MEMBERS OF THE APPLICANT, THE BOARD IS SATISFIED THAT THE DOCUMENTS ENTITLED "EMPLOYER AUTHORIZATION" FILED BY THE APPLICANT ON THEIR BEHALF VESTS

SUFFICIENT AUTHORITY IN THE APPLICANT TO DISCHARGE THE RESPONSIBILITIES OF AN ACCREDITED EMPLOYERS' ORGANIZATION ON THEIR BEHALF.

5. THE APPLICANT IS APPLYING TO THE BOARD FOR ACCREDITATION AS BARGAINING AGENT FOR ALL EMPLOYERS OF RODMEN FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON AND THE TOWNSHIPS OF PICKERING IN THE COUNTY OF ONTARIO AND THE PRESENT LIMITS OF THE FORD MOTOR COMPANY, OAKVILLE PLANT AND THE COUNTY OF HALTON IN THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR AND THE HEAVY ENGINEERING SECTORS. THE UNIT OF EMPLOYERS WHICH IS PROPOSED BY THE RESPONDENT IS THE SAME AS THAT WHICH IS BEING APPLIED FOR BY THE APPLICANT EXCEPT THE RESPONDENT SUBMITS THAT THE ROADS SECTOR AND THE ELECTRICAL POWER SYSTEMS SECTOR ARE ALSO APPROPRIATE FOR INCLUSION IN THE UNIT.

6. PRIOR TO 1967 THE APPLICANT WAS A PARTY TO A SERIES OF COLLECTIVE AGREEMENTS WITH THE RODMEN'S SECTION OF THE RESPONDENT. BY THESE AGREEMENTS THE APPLICANT RECOGNIZED THE UNION AS THE BARGAINING AGENT FOR ALL RODMEN WITHIN A RADIUS OF TWENTY-FIVE MILES FROM THE TORONTO CITY HALL. THE PREAMBLE TO EACH OF THESE COLLECTIVE AGREEMENTS PROVIDED THAT THE AGREEMENTS WERE TO APPLY WITH RESPECT TO EMPLOYEES "ENGAGED IN BUILDING CONSTRUCTION" IN THE ABOVE DESCRIBED GEOGRAPHIC AREA. THE APPLICANT ENTERED INTO A FURTHER COLLECTIVE AGREEMENT EFFECTIVE FROM OCTOBER 13, 1967, UNTIL APRIL 30, 1970. THE REFERENCE TO THE RODMEN'S SECTION WAS DELETED. BY THIS AGREEMENT THE APPLICANT RECOGNIZED THE RESPONDENT AS BARGAINING AGENT FOR ALL RODMEN IN THE SAME TWENTY-FIVE MILE RADIUS FROM TORONTO CITY HALL. THE PREAMBLE TO THE COLLECTIVE AGREEMENT, HOWEVER, WAS ALTERED TO PROVIDE THAT THE AGREEMENT WAS TO APPLY WITH RESPECT TO EMPLOYEES ENGAGED IN "BUILDING AND CONSTRUCTION WORK" IN THE SAID GEOGRAPHIC AREA. THE APPLICANT AND THE RESPONDENT ENTERED INTO A FURTHER COLLECTIVE AGREEMENT EFFECTIVE FROM MAY 1, 1970, UNTIL APRIL 30, 1971. THE SCOPE CLAUSE PROVIDED THAT THE APPLICANT RECOGNIZES THE RESPONDENT AS BARGAINING AGENT FOR ALL RODMEN IN AN EXPANDED GEOGRAPHIC AREA WHICH INCLUDES METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, AND THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO AND THE PRESENT LIMITS OF THE FORD MOTOR COMPANY, OAKVILLE PLANT AND THE COUNTY OF HALTON. THIS IS THE PRESENT GEOGRAPHIC JURISDICTION OF THE RESPONDENT AND IS THE SAME AREA FOR WHICH THE APPLICANT IS APPLYING FOR ACCREDITATION. THE PREAMBLE OF THE COLLECTIVE AGREEMENT IS IDENTICAL TO ITS PREDECESSOR. THAT IS TO SAY, THE AGREEMENT WAS MADE APPLICABLE TO EMPLOYERS ENGAGED IN BUILDING AND CONSTRUCTION WORK.

7. ALL OF THE MAJOR EMPLOYERS EMPLOYING RODMEN TO INSTALL

REINFORCING STEEL IN THE GEOGRAPHIC AREA APPLIED FOR BY THE APPLICANT ARE BOUND BY THE MOST RECENT COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT. FURTHER, ACCORDING TO THE EVIDENCE, THESE EMPLOYERS AND IN PARTICULAR G & H STEEL SERVICE OF CANADA AND GILBERT STEEL LTD., WHICH COMPANIES DO THE LARGEST VOLUME OF WORK IN THE RE-INFORCING STEEL FIELD IN THE GEOGRAPHIC AREA COVERED BY THE SAID AGREEMENT, OPERATE IN BOTH THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR AND THE HEAVY ENGINEERING SECTOR. MORE SPECIFICALLY, THE EVIDENCE OF DAVID HADDEN, THE PRESIDENT OF G & H STEEL SERVICE OF CANADA IS THAT, BASED ON THE CONTRIBUTIONS MADE TO THE WELFARE TRUST FUND OF THE RESPONDENT BY ALL OF THE CONTRACTORS COVERED BY THE MOST RECENT COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT AS OF THE YEAR ENDING APRIL 30, 1971, G & H STEEL SERVICE OF CANADA DOES APPROXIMATELY 35 PER CENT OF ALL WORK IN THE REINFORCING STEEL FIELD. ACCORDING TO HADDEN'S EVIDENCE, ROUGHLY FROM 30 TO 50 PER CENT OF THE ROD WORK DONE BY G & H STEEL SERVICE IS DONE IN THE HEAVY ENGINEERING FIELD AND THE REMAINDER IS DONE IN THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR. HADDEN FURTHER TESTIFIED THAT THERE IS A REGULAR INTERCHANGE OF RODMEN EMPLOYED ON PROJECTS IN THE HEAVY ENGINEERING SECTOR AND THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR AND ALL HAVE WORKED UNDER THE TERMS AND CONDITIONS OF THE COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE APPLICANT AND THE RESPONDENT. WE WOULD MENTION ALSO THAT ACCORDING TO THE EVIDENCE NONE OF THE EMPLOYERS FALLING WITHIN THE PURVIEW OF THE INSTANT APPLICATION HAVE A COLLECTIVE BARGAINING RELATIONSHIP WITH THE HEAVY CONSTRUCTION ASSOCIATION OF TORONTO.

8. SECTION 114(1) OF THE ACT PROVIDES THAT UPON AN APPLICATION FOR ACCREDITATION, THE BOARD SHALL DETERMINE THE UNIT OF EMPLOYERS THAT IS APPROPRIATE FOR COLLECTIVE BARGAINING IN A PARTICULAR GEOGRAPHIC AREA AND SECTOR, BUT THAT THE BOARD NEED NOT CONFINE THE UNIT TO ONE GEOGRAPHIC AREA OR SECTOR, AND MAY, IF IT CONSIDERS IT ADVISABLE, COMBINE AREAS OR SECTORS OR BOTH OR PARTS THEREOF. THE PARTIES TO THE INSTANT APPLICATION ARE IN AGREEMENT THAT ANY UNIT FOUND TO BE APPROPRIATE BY THE BOARD SHOULD BE RESTRICTED SOLELY TO RODMEN AND THAT THE GEOGRAPHIC AREA SHOULD COVER THE AREA FALLING WITHIN THE TERRITORIAL JURISDICTION OF THE RESPONDENT. HAVING REGARD TO THE EVIDENCE THAT THE EMPLOYERS FOR WHOM THE APPLICANT IS SEEKING ACCREDITATION BY AND LARGE DO WORK IN BOTH THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR AND THE HEAVY ENGINEERING SECTOR AND THE EVIDENCE OF THE INTERCHANGE OF RODMEN WORKING FOR A SINGLE EMPLOYER BETWEEN THE TWO SECTORS, THE BOARD IN THESE CIRCUMSTANCES DEEMS IT ADVISABLE TO COMBINE THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR AND THE HEAVY ENGINEERING SECTOR.

9. HAVING REGARD TO THE EVIDENCE OF WHAT APPEARS TO BE A HIGHLY COMPLICATED STRUCTURE OF COLLECTIVE BARGAINING IN THE ELECTRICAL POWER SYSTEMS SECTOR, THE BOARD IS NOT SATISFIED THAT THE ELECTRICAL POWER

SYSTEMS SECTOR IS APPROPRIATE FOR INCLUSION IN THE UNIT OF EMPLOYERS IN THE INSTANT APPLICATION. WITH RESPECT TO THE ROAD SECTOR, THE EVIDENCE IS THAT VIRTUALLY NO RODMEN ARE EMPLOYED IN THAT SECTOR. FOR THIS REASON, THE BOARD ALSO IS NOT SATISFIED THAT THE ROAD SECTOR IS APPROPRIATE FOR INCLUSION IN THE UNIT OF EMPLOYERS IN THE INSTANT APPLICATION.

10. THE BOARD ACCORDINGLY FINDS THAT ALL EMPLOYERS OF EMPLOYEES WHO ARE RODMEN FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO AND THE PRESENT LIMITS OF THE FORD MOTOR COMPANY, OAKVILLE PLANT AND THE COUNTY OF HALTON IN THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR, AND THE HEAVY ENGINEERING SECTOR, CONSTITUTE AN APPROPRIATE UNIT FOR COLLECTIVE BARGAINING.

11. IN ORDER TO DETERMINE THE NUMBER OF EMPLOYERS IN THE UNIT OF EMPLOYERS DESCRIBED IN PARAGRAPH 10, THE BOARD FOLLOWED THE PROCEDURE OUTLINED IN HAMILTON AND DISTRICT SHEET METAL CONTRACTORS INC. AND SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION LOCAL UNION 537 ET. AL. (1971) OLRB REP. 562 (SEPT.). THE REPRESENTATIONS BY THE VARIOUS EMPLOYERS IN THEIR FILINGS WERE ACCEPTED BY THE APPLICANT AND THE RESPONDENT, EXCEPT IN CERTAIN INSTANCES REFERRED TO BELOW. THE TOTAL NUMBER OF EMPLOYERS SERVED WITH NOTICE OF THE APPLICATION WAS ONE HUNDRED AND SIXTY-ONE (161). THESE COMPRISED THE REVISED SCHEDULE 'E' AND REVISED SCHEDULE 'F' (FOLLOWING THE PROCEDURE USED AT THE HEARING IN THIS MATTER EMPLOYERS ARE HEREIN REFERRED TO WITH THE NUMBER THEY WERE ASSIGNED ON THESE REVISED SCHEDULES E.G. E-26 OR F-5). AS A RESULT OF THE VARIOUS FILINGS AND REPRESENTATIONS MADE TO THE BOARD AT THE HEARING THE FOLLOWING EMPLOYERS WERE REMOVED FROM THE LIST OF EMPLOYERS IN THE UNIT OF EMPLOYERS:

BALL BROTHERS LTD. (E-3) - BECAUSE THIS WAS
A DUPLICATION WITH ANOTHER EMPLOYER APPEARING
ELSEWHERE ON THE LIST.

POLARIS STEEL LIMITED (F-23) - BECAUSE THIS
EMPLOYER STATED IN HIS EMPLOYER INTERVENTION
THAT IT WAS NOT AN EMPLOYER IN THE CONSTRUCTION
INDUSTRY.

THE BOARD HAS THROUGH ITS OFFICERS MADE VARIOUS ATTEMPTS TO SERVE THE FOLLOWING EMPLOYERS:

CAPY STEEL (E-21)
REINFORCING STEEL PLACING Co. (E-109)

DANFORTH CONSTRUCTION (F-7)
 H.F.A. STEEL SERVICE Co. (F-14)
 M & M REINFORCING (F-16)
 M.J.D. STEEL Co. (F-18)
 SECANT CONSTRUCTION (CENTRAL) LTD. (F-26)

LETTERS SENT TO THESE EMPLOYERS BY REGISTERED MAIL HAVE BEEN RETURNED. ATTEMPTS TO LOCATE THESE EMPLOYERS HAVE INDICATED THAT THEY ARE NO LONGER IN BUSINESS. FURTHER, THE APPLICANT AND THE RESPONDENT AGREED, AT THE HEARING, THAT THESE EMPLOYERS SHOULD BE CONSIDERED AS NO LONGER IN BUSINESS FOR THE PURPOSE OF THIS APPLICATION AND THEY HAVE THEREFORE BEEN DELETED FROM THE LIST.

12. ONE OF THE EMPLOYERS SERVED WITH NOTICE OF THIS APPLICATION IN FORM 67 REFUSED TO FILE A FORM 68, EMPLOYER INTERVENTION, TOGETHER WITH ITS ACCOMPANYING SCHEDULE 'H' AS REQUIRED BY THE BOARD'S RULES OF PROCEDURE. THIS EMPLOYER HAS CONTINUALLY TOLD THE BOARD THAT ON ADVICE OF COUNSEL THEY REFUSE TO FILE ANYTHING WITH THE BOARD. THE FORM 67 GIVES AN EMPLOYER SUFFICIENT NOTICE OF THE MATTERS INVOLVED IN AN ACCREDITATION PROCEEDING. SINCE THE APPLICANT AND THE RESPONDENT AGREE THAT CON-ENG CONSTRUCTION LTD. (F-4) IS INCLUDED IN THE LIST OF EMPLOYERS AND THAT EMPLOYER HAS HAD AMPLE OPPORTUNITY TO MAKE REPRESENTATIONS IN THIS MATTER, THE BOARD FINDS THAT CON-ENG CONSTRUCTION LTD. IS AN EMPLOYER IN THE UNIT OF EMPLOYERS.

13. TWENTY-EIGHT OF THE EMPLOYERS WHO FILED EMPLOYER INTERVENTIONS INDICATED THAT THE RESPONDENT TRADE UNION WAS NOT ENTITLED TO BARGAIN ON BEHALF OF EMPLOYEES IN THE GEOGRAPHIC AREA AND SECTOR AFFECTED BY THIS APPLICATION. THE RESPONDENT HAS FILED WITH THE BOARD COLLECTIVE AGREEMENTS RELATING TO SIX (6) OF THESE EMPLOYERS. ON THE BASIS OF THE AGREEMENTS FILED WITH THE BOARD, THE BOARD IS PREPARED TO INCLUDE THESE EMPLOYERS IN THE UNIT OF EMPLOYERS. HOWEVER, ON THE BASIS OF ALL THE EVIDENCE BEFORE THE BOARD THE FOLLOWING EMPLOYERS HAVE BEEN REMOVED FROM THE UNIT OF EMPLOYERS BECAUSE THE RESPONDENT IS NOT ENTITLED TO BARGAIN ON BEHALF OF EMPLOYEES OF THESE EMPLOYERS IN THE AREA AND SECTOR DETERMINED BY THE BOARD TO BE APPROPRIATE IN PARAGRAPH 10 ABOVE:

BRAMALEA GENERAL CONTRACTING (PEEL) LIMITED (E-9)
 CADET CONSTRUCTION LIMITED (E-14)
 T. CAMPBELL CONSTRUCTION LTD. (E-15)
 THE CAPE-TILEMAN Co. LTD. (E-20)
 COLT CONTRACTING COMPANY LIMITED (E-28)
 LOUIS DONOLO INC. (E-36)
 EAGLEWOOD CONSTRUCTION Co. LIMITED (E-40)
 GILLANDERS CONSTRUCTION LTD. (E-56)
 WILLIAM HARTLEY CONSTRUCTION LIMITED (E-66)

KOVACS CONSTRUCTION CO. LTD. (E-78)
 MCNAMARA CONSTRUCTION OF ONTARIO LTD. (E-90)
 ONTARIO ROCK DRILLERS LIMITED (E-99)
 OSTVIK CONSTRUCTION LIMITED (E-100)
 FRANZ PATELLA INC. (E-102)
 TOWER CONSTRUCTION (E-119)
 J. WATT & CO. (BUILDERS) LIMITED (E-125)
 GEORGE WIMPEY CANADA LIMITED (E-129)
 ZORGE CONSTRUCTION COMPANY LIMITED (E-132)

ART COTA STEEL SETTERS (F-1)
 CONENCO CANADA (1968) LTD. (F-3)
 HURLEY-GREGORIS CONSTRUCTION (F-15)
 W.A. STEPHENSON CONSTRUCTION CO. LIMITED (F-27)

14. THE REVISED SCHEDULE 'E' AND REVISED SCHEDULE 'F' WERE COMPILED ON THE BASIS OF INFORMATION SUPPLIED BY THE RESPONDENT AND APPLICANT. THOSE EMPLOYERS ON REVISED SCHEDULE 'E' WERE THOUGHT TO HAVE HAD EMPLOYEES IN THE AREA AND SECTOR UNDER CONSTRUCTION IN THE YEAR IMMEDIATELY PRECEDING THE DATE OF THE MAKING OF THIS APPLICATION. THOSE ON REVISED SCHEDULE 'F' WERE CONSIDERED NOT TO HAVE HAD SUCH EMPLOYEES WITHIN THAT ONE YEAR PERIOD. HOWEVER, ON THE BASIS OF THE FILINGS BY INDIVIDUAL EMPLOYERS EIGHTY-TWO (82) OF THE EMPLOYERS LISTED ON THE REVISED SCHEDULE 'E' WERE TRANSFERRED TO SCHEDULE 'F' SINCE THEIR FILINGS INDICATED THAT THEY HAD NO EMPLOYEES DURING THE YEAR PRECEDING THE MAKING OF THIS APPLICATION. CONVERSELY, FIVE (5) EMPLOYERS ORIGINALLY ON REVISED SCHEDULE 'F' HAVE HAD EMPLOYEES DURING THE YEAR IMMEDIATELY PRECEDING THIS APPLICATION AND HAVE THUS BEEN TRANSFERRED TO THE FINAL SCHEDULE 'E'.

15. IN ACCORDANCE WITH THE FOREGOING CONSIDERATIONS, THE BOARD HAS COMPILED A FINAL SCHEDULE 'E' AND A FINAL SCHEDULE 'F'. THE BOARD HAS TAKEN AS THE CORRECT NAME OF EACH INDIVIDUAL EMPLOYER, THE NAME STATED IN FORM 68 FILED BY THE EMPLOYER. THE FINAL SCHEDULE 'E' AND SCHEDULE 'F' ARE AS FOLLOWS:

FINAL SCHEDULE 'E'

WM. BATTEN STRUCTURAL ERECTORS LTD.
 BENNETT-PRATT LIMITED
 C & T REINFORCING STEEL CO. LTD.
 CAMSTON LIMITED
 CAPE INSTALLATIONS LTD.
 CUSTODIS CANADIAN CHIMNEY CO.
 DALTON ENGINEERING & CONSTRUCTION COMPANY LIMITED
 DICKIE CONSTRUCTION COMPANY LIMITED
 DIRECT FORMING LIMITED

E. G. M. CAPE & COMPANY LIMITED
 EASTERN CONSTRUCTION COMPANY LIMITED
 ELLIS-DON LIMITED
 EPSILON REINFORCING STEEL LIMITED
 F & L STEEL REINFORCING LTD.
 FERRO STRUCTURAL STEEL (TORONTO) LIMITED
 G & H STEEL SERVICE OF CANADA LTD.
 GILBERT STEEL LIMITED
 J. HARRIS AND SONS LIMITED
 LEADER MASONRY & FORMING LIMITED
 E. S. MARTIN CONSTRUCTION LIMITED
 FINLEY W. McLACHLAN CONSTRUCTION CO. LIMITED
 OLYMPIA & YORK DEVELOPMENTS LIMITED
 OMER'S STEEL SERVICE
 ONEIL STEEL LIMITED
 ONTARIO REINFORCING STEEL
 PATRAM CONSTRUCTION LIMITED
 PLYFORM CONSTRUCTION LTD.
 REDFERN CONSTRUCTION COMPANY LIMITED
 C. A. SMITH CONTRACTING LIMITED
 TAYLOR WOODROW OF CANADA LIMITED
 WELLAND IRON & METAL CO. LTD. - ENNISTEEL WAREHOUSE
 DIVISION
 WESTERN REINFORCING STEEL (COOKSVILLE) LIMITED
 YORK STEEL CONSTRUCTION LIMITED
 YOUNG & APPERLEY LIMITED

FINAL SCHEDULE 'F'

ALLY CONSTRUCTION CO. LIMITED
 ASSOCIATED FORMING CONTRACTORS LIMITED
 AYKROYD CONSTRUCTION (1965) LIMITED
 BALL BROTHERS LIMITED
 BECO EQUIPMENT LIMITED
 BIRD CONSTRUCTION COMPANY LIMITED
 ED. BRODERS CONSTRUCTION LTD.
 G. E. BUCKINGHAM CONTRACTING LTD.
 CADCONEX ENTERPRISES LTD.
 CAMPBELL-YUSTIN LIMITED
 CANADIAN STEBBINGS ENG. & MAIN
 PAUL CARRUTHERS CONSTRUCTION LIMITED
 THE CARTER CONSTRUCTION COMPANY LIMITED
 CASEY-HEWSON CONSTRUCTION LTD.
 CEMENTARION CO. (CANADA) LTD.
 RWO REILLY (CLOKE CONST. CO. LTD.)
 CODECO LTD.

CONASON CONSTRUCTION LTD.
 CON-ENG CONTRACTORS LTD.
 BEAVER COOK & LEITCH LIMITED
 COOPER CONST. CO. (EASTERN) LTD.
 D. R. CRAWFORD CONSTRUCTION LIMITED
 DINEEN CONSTRUCTION LIMITED
 DOYLE HINTON LIMITED
 DROGE CONSTRUCTION LIMITED
 EICHLEAY CORPORATION INTERNATIONAL
 ETHERINGTON CONSTRUCTION LIMITED
 FAHRMANN CONSTRUCTION LIMITED
 DAVID FARN CONSTRUCTION LIMITED
 FASSEL CONST. CO. LTD.
 FIELD CONSTRUCTION LIMITED
 FLYING FORMING LIMITED
 THE FOUNDATION COMPANY OF CANADA LIMITED
 FRAN-KIRI FORMING LIMITED
 THE FRID CONSTRUCTION COMPANY LIMITED
 W. G. GALLAGHER CONSTRUCTION LTD.
 GARDINER-WIGHTON CO. LIMITED
 JOHN GOBA LTD.
 GOTHIC CONSTRUCTION CO.
 GRAHAM AND SIBBETT CO. LIMITED
 GRECO CONSTRUCTION COMPANY
 JACK GREEDY LIMITED
 A. P. GREEN REFRACTORIES (CANADA) LTD.
 M. J. GUTHRIE CONSTRUCTION LTD.
 HARBRIDGE & CROSS LTD.
 INTERNORTH CONSTRUCTION COMPANY
 ROBERT D. IRONSIDE ASSOCIATES LIMITED
 IVEY-DREGER CONSTRUCTION LIMITED
 THE JACKSON-LEWIS COMPANY LIMITED
 JANIN BUILDING & CIVIL WORKS LTD.
 WM. H. JOHNSTON CONSTRUCTION LTD.
 KAMRUS CONSTRUCTION LIMITED
 KEVLIN CONSTRUCTION CO. LTD.
 R. G. KIRBY & SONS LIMITED
 THE JOHN L. KLUG CORPORATION
 KONVEY CONSTRUCTION COMPANY LIMITED
 LAING CONSTRUCTION AND EQUIPMENT LIMITED
 LESLIE GEORGE CONSTRUCTION LIMITED
 LISGAR CONSTRUCTION COMPANY (DIVISION OF UNITED
 SHELTERS LIMITED)
 THE LUNAR COMPANY LIMITED
 T. F. LYNCH CONSTRUCTION LTD.
 MAGIL CONSTRUCTION LTD.
 MANCINI CONSTRUCTION

V. K. MASON CONSTRUCTION LTD.
 MAY CONSTRUCTION Co. LTD.
 ROBERT McALPINE LTD.
 W. A. McDougall CONSTRUCTION MANAGEMENT LTD.
 W. A. McDougall LIMITED
 McMullen & Warnock LIMITED
 MEL-RON CONSTRUCTION LTD.
 MILNE & NICHOLLS LIMITED
 THE MITCHELL CONSTRUCTION COMPANY (CANADA)
 MOLLENHAUER LTD.
 ONTARIO FORMWORK LIMITED
 WM. PARKER CONSTRUCTION LIMITED
 PERINI LIMITED
 A. PETERSON LTD.
 C. A. PITTS CONSTRUCTION (ONT.) LTD.
 PLORINS & PEDE LTD.
 POLLOCK-McGIBBON LTD.
 JOHN RAE & SONS CONSTRUCTION LTD.
 REINFORCING STEEL PRODUCTS Co. DIVISION OF ABKOSTEEL
 LIMITED
 JAMES A. RICE LTD.
 LYNCH-RICHARDS CONSTRUCTION LIMITED
 ROBERTSON-YATES CORPORATION LIMITED
 ROCKWIN CONSTRUCTION LTD.
 RICHARD & B. A. RYAN LIMITED
 SALIT STEEL (NIAGARA) LIMITED
 SUTO STEEL LIMITED
 TURNCREST CONSTRUCTION LIMITED
 UMACS CONSTRUCTION LIMITED
 VANBOTS CONSTRUCTION LTD.
 VARAMAE CONSTRUCTION LIMITED
 MICHAEL WADE CONSTRUCTION Co. LTD.
 WEST YORK CONSTRUCTION LIMITED
 JOHN WHEELWRIGHT LIMITED

THE BOARD FINDS THAT THE NUMBER OF EMPLOYERS ON SCHEDULE 'E' TOTAL-
 LING THIRTY-FOUR (34) IS THE NUMBER OF EMPLOYERS TO BE ASCERTAINED
 BY THE BOARD UNDER SECTION 115(1)(A) OF THE ACT.

16. ON THE BASIS OF THE WRITTEN EVIDENCE OF REPRESENTATION CON-
 sidered ABOVE AND ON THE BASIS OF ALL THE EVIDENCE BEFORE US, THE BOARD
 FINDS THAT ON THE DATE OF THE MAKING OF THIS APPLICATION THE APPLICANT
 REPRESENTED TWENTY-THREE (23) OF THE THIRTY-FOUR (34) EMPLOYERS ASCER-
 TAINED AS THE NUMBER OF EMPLOYERS UNDER SECTION 115(1)(A) OF THE ACT.
 THE TWENTY-THREE (23) EMPLOYERS SO REPRESENTED BY THE APPLICANT IS
 THE NUMBER OF EMPLOYERS TO BE ASCERTAINED BY THE BOARD UNDER SECTION
 115(1)(B) OF THE ACT. ACCORDINGLY, THE BOARD IS SATISFIED THAT A

MAJORITY OF THE EMPLOYERS IN THE UNIT OF EMPLOYERS ARE REPRESENTED BY THE APPLICANT EMPLOYERS' ORGANIZATION.

17. IN A PREVIOUS DECISION IN THIS MATTER THE BOARD APPOINTED AN EXAMINER TO EXAMINE CERTAIN EMPLOYERS WITH RESPECT TO THE REPRESENTATIVE NATURE OF THE WEEKLY PAYROLL PERIOD FOR THE WEEK IMMEDIATELY PRECEDING THE DATE OF THE MAKING OF THIS APPLICATION. ALL BUT ONE OF THE EMPLOYERS WITHDREW THEIR CLAIM THAT THE PERIOD IN QUESTION WAS NOT REPRESENTATIVE. THE REMAINING EMPLOYER, CAMSTON LIMITED (E-17), FILED THREE (3) SCHEDULE H'S FOR VARIOUS WEEKLY PAYROLL PERIODS. SINCE THESE THREE SCHEDULES SHOW THE SAME NUMBER OF EMPLOYEES THE BOARD CONSIDERS IT ADVISABLE TO CHOOSE THE WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING FEBRUARY 3, 1971, AS THE REPRESENTATIVE PAYROLL PERIOD FOR THIS EMPLOYER. FOR THE REMAINING THIRTY-FOUR (34) EMPLOYERS THE BOARD IS OF THE OPINION THAT THE WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING MAY 18, 1971 IS SATISFACTORY.

18. ON THE BASIS OF ALL THE EVIDENCE BEFORE IT AND IN ACCORDANCE WITH THE FOREGOING CONSIDERATIONS, THE BOARD FINDS THAT THERE WERE TWO HUNDRED AND TWENTY-FIVE (225) EMPLOYEES AFFECTED BY THE APPLICATION. THE TWO HUNDRED AND TWENTY-FIVE (225) EMPLOYEES IS THE NUMBER OF EMPLOYEES TO BE ASCERTAINED BY THE BOARD UNDER SECTION 115(1)(c) OF THE ACT.

19. THE BOARD FINDS THAT THE TWENTY-THREE (23) EMPLOYERS REPRESENTED BY THE APPLICANT EMPLOYERS' ORGANIZATION EMPLOYED A TOTAL OF ONE HUNDRED AND NINETY (190) EMPLOYEES IN THE WEEKLY PAYROLL PERIODS DETERMINED IN PARAGRAPH 17 AS THE PAYROLL PERIOD FOR THE PURPOSES OF SECTION 115(1)(c). THE BOARD IS THEREFORE SATISFIED THAT THE MAJORITY OF EMPLOYERS REPRESENTED BY THE APPLICANT EMPLOYED A MAJORITY OF EMPLOYEES AS ASCERTAINED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 115(1)(c).

20. HAVING REGARD TO ALL THE ABOVE FINDINGS, A CERTIFICATE OF ACCREDITATION WILL ISSUE TO THE APPLICANT FOR THE UNIT OF EMPLOYERS FOUND TO BE THE APPROPRIATE UNIT OF EMPLOYERS IN PARAGRAPH 10 AND IN ACCORDANCE WITH THE PROVISIONS OF SECTION 115(2) OF THE ACT, FOR SUCH OTHER EMPLOYERS FOR WHOSE EMPLOYEES THE RESPONDENT MAY AFTER MAY 3, 1971, OBTAIN BARGAINING RIGHTS THROUGH CERTIFICATION OR VOLUNTARY RECOGNITION IN THE GEOGRAPHIC AREA AND SECTOR SET OUT IN THE APPROPRIATE UNIT OF EMPLOYERS.

997-71-U: PERCY WOODS (COMPLAINANT) v. NAPANEE INDUSTRIES LTD. (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFE.

DECISION OF THE BOARD: NOVEMBER 18, 1971.

1. IN A DECISION DATED NOVEMBER 4, 1971 THE BOARD DISMISSED THE COMPLAINT OF THE COMPLAINANT FILED UNDER SECTION 79 OF THE LABOUR RELATIONS ACT ON THE GROUND THAT THE COMPLAINT DID NOT, IN THE OPINION OF THE BOARD, MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED. IN ACCORDANCE WITH THE PROVISIONS OF SUBSECTION (1) OF SECTION 46 OF THE BOARD'S RULES OF PROCEDURE, REASONS WERE GIVEN FOR THE DISMISSAL OF THE COMPLAINT.

2. THE COMPLAINANT HAS NOW REQUESTED THE BOARD TO REVIEW ITS DECISION. IN THE BOARD'S DECISION DISMISSING THE COMPLAINT, REFERENCE WAS MADE TO THE FACT THAT BEFORE THE BOARD IS ENTITLED TO MAKE AN ORDER AGAINST AN EMPLOYER UNDER SECTION 79 OF THE ACT, THE EMPLOYER MUST HAVE ACTED CONTRARY TO SOME SECTION OF THE LABOUR RELATIONS ACT OTHER THAN SECTION 79. IN OTHER WORDS, IT IS NOT ENOUGH FOR A COMPLAINANT TO ALLEGE, IN THE LANGUAGE OF SECTION 79, THAT HE HAS BEEN REFUSED EMPLOYMENT, OR DISCHARGED, OR DISCRIMINATED, AGAINST, OR THREATENED, OR COERCED, OR INTIMIDATED BY AN EMPLOYER. THE DISCHARGE, DISCRIMINATION, THREAT, COERCION OR INTIMIDATION, AS THE CASE MAY BE, MUST BE CONTRARY TO SOME PROVISION OF THE LABOUR RELATIONS ACT AND, IN ADDITION, MUST RELATE TO THE EMPLOYMENT, OPPORTUNITY FOR EMPLOYMENT OR CONDITIONS OF EMPLOYMENT OF THE GRIEVOR. IN ITS EARLIER DECISION THE BOARD FOUND NOT ONLY THAT THE COMPLAINANT FAILED TO ALLEGE THAT THE RESPONDENT IN THIS CASE HAD REFUSED HIM EMPLOYMENT, DISCHARGED HIM, DISCRIMINATED AGAINST HIM, OR THREATENED OR COERCED OR INTIMIDATED HIM CONTRARY TO SOME PROVISION OF THE LABOUR RELATIONS ACT, BUT, FURTHER, WENT ON TO POINT OUT THAT ON THE MATERIAL BEFORE IT THE BOARD COULD NOT FIND THAT THE EMPLOYER HAD, IN FACT, ACTED CONTRARY TO ANY SECTION OF THE LABOUR RELATIONS ACT.

3. ON THE MATERIAL BEFORE US ON THIS REQUEST FOR REVIEW, WE ARE NOT CERTAIN THAT THE COMPLAINANT IN THIS CASE FULLY UNDERSTANDS WHAT IT IS THAT HE WOULD HAVE TO PROVE IN ORDER TO SUSTAIN THE COMPLAINT AGAINST THE RESPONDENT. ON THE ONE HAND, THE MATERIAL REFERS TO DICTIONARY DEFINITIONS OF SUCH WORDS AS "COERCED" AND "INTIMIDATED". ON THE OTHER HAND, REFERENCE IS MADE BY THE COMPLAINANT TO SECTION 58A OF THE ACT, IN ADDITION TO SECTION 79(1)(A). IT IS NOT CLEAR WHETHER THE COMPLAINANT'S REFERENCE TO SECTION 58A IS TO THE LABOUR RELATIONS ACT IN FORCE PRIOR TO SEPTEMBER 1971, OR TO REVISED STATUTES OF ONTARIO 1970, CHAPTER 232, WHICH CAME INTO FORCE SEPTEMBER 1,

1971, THAT SECTION PROVIDES AS FOLLOWS:

58A. NO TRADE UNION SHALL SUSPEND, EXPEL OR PENALIZE IN ANY WAY A MEMBER BECAUSE HE HAS REFUSED TO ENGAGE IN OR TO CONTINUE TO ENGAGE IN A STRIKE THAT IS UNLAWFUL UNDER THIS ACT.

THERE IS NO SUGGESTION IN THE MATERIAL BEFORE US THAT ANY TRADE UNION HAS SUSPENDED OR EXPELLED OR PENALIZED THE COMPLAINANT BECAUSE HE HAS REFUSED TO ENGAGE IN OR TO CONTINUE TO ENGAGE IN AN UNLAWFUL STRIKE. IN POINT OF FACT, NO TRADE UNION HAS BEEN NAMED AS A RESPONDENT IN THIS COMPLAINT. THE COMPLAINANT IS SEEKING RELIEF AGAINST HIS EMPLOYER AND NOT AGAINST THE TRADE UNION.

4. IF THE REFERENCE IS TO SECTION 58(A) UNDER THE ACT IN FORCE SEPTEMBER 1, 1971, THAT SECTION PROVIDES:

58. NO EMPLOYER, EMPLOYERS' ORGANIZATION OR PERSON ACTING ON BEHALF OF AN EMPLOYER OR AN EMPLOYERS' ORGANIZATION,

(A) SHALL REFUSE TO EMPLOY OR TO CONTINUE TO EMPLOY A PERSON, OR DISCRIMINATE AGAINST A PERSON IN REGARD TO EMPLOYMENT OR ANY TERM OR CONDITION OF EMPLOYMENT BECAUSE THE PERSON WAS OR IS A MEMBER OF A TRADE UNION OR WAS OR IS EXERCISING ANY OTHER RIGHTS UNDER THIS ACT;

THERE IS NO SUGGESTION IN ANY OF THE MATERIAL BEFORE THIS BOARD THAT THE RESPONDENT REFUSED TO CONTINUE TO EMPLOY THE COMPLAINANT OR DISCRIMINATED AGAINST HIM IN REGARD TO HIS EMPLOYMENT OR ANY TERM OR CONDITION OF EMPLOYMENT BECAUSE THE PERSON WAS OR IS A MEMBER OF A TRADE UNION OR WAS OR IS EXERCISING ANY OTHER RIGHTS UNDER THE LABOUR RELATIONS ACT. WHATEVER MAY HAVE BEEN THE REASON THAT THE RESPONDENT REFUSED TO CONTINUE TO EMPLOY THE COMPLAINANT, IT WAS NOT FOR THAT REASON.

5. IN HIS REQUEST FOR REVIEW, THE COMPLAINANT ALSO REFERS TO SECTION 51A. IN THE CONTEXT IN WHICH THAT SECTION IS REFERRED TO, IT IS QUITE CLEAR THAT THE COMPLAINANT IS REFERRING TO SECTION 51A AS SET OUT IN THE ACT PRIOR TO SEPTEMBER 1, 1971. THAT SECTION PROVIDES:

51A. A TRADE UNION OR COUNCIL OF TRADE UNIONS, SO LONG AS IT CONTINUES TO BE ENTITLED

TO REPRESENT EMPLOYEES IN A BARGAINING UNIT, SHALL NOT ACT IN A MANNER THAT IS ARBITRARY, DISCRIMINATORY OR IN BAD FAITH IN THE REPRESENTATION OF ANY OF THE EMPLOYEES IN THE UNIT, WHETHER OR NOT MEMBERS OF THE TRADE UNION OR OF ANY CONSTITUENT UNION OF THE COUNCIL OF TRADE UNIONS, AS THE CASE MAY BE.

IT IS QUITE OBVIOUS THAT THIS SECTION HAS NOTHING TO DO WITH AN EMPLOYER AND IN THIS COMPLAINT WE ARE CONCERNED ONLY WITH A CLAIM AGAINST THE COMPLAINANT'S FORMER EMPLOYER. SECTION 51A HAS NO RELEVANCE TO SUCH A CLAIM.

6. AFTER CAREFULLY CONSIDERING ALL OF THE MATERIAL BEFORE US, THE BOARD, PURSUANT TO SUBSECTION (4)(c) OF SECTION 46 OF THE BOARD'S RULES OF PROCEDURE HEREBY CONFIRMS ITS DECISION, DATED NOVEMBER 4, 1971, DISMISSING THE COMPLAINT.

688-71-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. WOODWAY STRUCTURAL COMPONENTS (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: M. LEVINSON AND J. HORAN FOR THE APPLICANT; E. L. STRINGER, Q.C., AND A. LAVER FOR THE RESPONDENT; P. VARHELYI FOR THE OBJECTORS.

DECISION OF THE BOARD: NOVEMBER 24, 1971.

1. THE APPLICANT IS APPLYING PURSUANT TO SECTION 47A (NOW SECTION 55) OF THE ACT FOR A DECLARATION THAT AS A RESULT OF THE SALE OF A BUSINESS BY ENGINEERED TIMBER PRODUCTS, A DIVISION OF GLULAM PRODUCTS LIMITED TO THE RESPONDENT, THE RESPONDENT IS BOUND BY A COLLECTIVE AGREEMENT WHICH WAS IN EFFECT BETWEEN THE APPLICANT AND THE VENDOR COMPANY.

2. THE POSITION OF THE RESPONDENT IS THAT THERE HAS NOT BEEN A SALE OF THE BUSINESS OF ENGINEERED TIMBER PRODUCTS, A DIVISION OF GLULAM PRODUCTS LIMITED TO WOODWAY STRUCTURAL COMPONENTS. THE RESPONDENT FURTHER SUBMITS, IN THE ALTERNATIVE, THAT SHOULD THE BOARD FIND THAT THERE WAS A SALE OF A BUSINESS AS ALLEGED BY THE APPLICANT, THAT THE RESPONDENT HAS CHANGED THE CHARACTER OF THE BUSINESS SO THAT IT IS SUBSTANTIALLY DIFFERENT FROM THE BUSINESS CARRIED ON BY ENGINEERED TIMBER PRODUCTS THAT THE BARGAINING RIGHTS HELD BY THE APPLICANT FOR THE EMPLOYEES OF THE LATTER COMPANY SHOULD BE TERMINATED.

3. THE RELEVANT EVIDENCE RELATING TO THE ISSUE AS TO WHETHER THERE WAS A SALE OF THE BUSINESS OF ENGINEERED TIMBER PRODUCTS TO WOODWAY STRUCTURAL COMPONENTS IS OUTLINED BELOW. GLULAM PRODUCTS LIMITED, WHICH IS A COMPANY WITH HEAD OFFICE IN NEW WESTMINSTER, BRITISH COLUMBIA, CARRIED ON BUSINESS UNDER THE NAME OF ENGINEERED TIMBER PRODUCTS IN PREMISES LOCATED IN BURLINGTON, ONTARIO. THE MAIN PORTION OF THE BUSINESS CARRIED ON IN THE BURLINGTON PLANT WAS THE MANUFACTURE AND SALE OF LAMINATED STRUCTURAL TIMBERS, BEAMS AND ARCHES AND PLYWOOD STRUCTURAL PANELS FOR INDUSTRIAL USE. GLULAM PRODUCTS LIMITED ALSO HAD A CONTRACT WITH A COMPANY TO MANUFACTURE CERTAIN RECREATIONAL EQUIPMENT AND MORE PARTICULARLY DIVING BOARDS AND CHILDREN'S PLAYGROUND SLIDES. THE LATTER FORMED A RELATIVELY SMALL PART OF THE BUSINESS CARRIED ON IN THE NAME OF ENGINEERED TIMBER PRODUCTS AT BURLINGTON.

4. BY A DEBENTURE DATED DECEMBER 20, 1968, GLULAM PRODUCTS LIMITED CHARGED AND MORTGAGED ITS PROPERTY, ASSETS AND UNDERTAKINGS IN FAVOUR OF THE BANK OF MONTREAL. GLULAM PRODUCTS LIMITED DEFAULTED IN ITS PAYMENTS UNDER THE DEBENTURE AND BY AN ORDER OF THE SUPREME COURT OF BRITISH COLUMBIA DATED APRIL 19, 1971, ALL OF THE PROPERTY, ASSETS AND UNDERTAKINGS OF GLULAM PRODUCTS LIMITED WERE PLACED UNDER RECEIVERSHIP ON BEHALF OF THE BANK OF MONTREAL. ON APRIL 16, 1971, THREE DAYS PRIOR TO THE ISSUING OF THE COURT ORDER, GLULAM SHUT DOWN ITS OPERATIONS AT ITS ENGINEERED TIMBER PRODUCTS PLANT IN BURLINGTON.

5. DURING THE WEEK COMMENCING ON MAY 23, 1971, A NEW ONTARIO COMPANY WAS INCORPORATED IN THE NAME OF 244106 MANUFACTURING LIMITED. THE THREE DIRECTORS OF THE COMPANY WHO OWN ALL OF THE SHARES IN EQUAL NUMBER ARE EVAN FOWLER, STANLEY LAVER AND HOLGAR NEILSON. PRIOR TO THE CLOSING DOWN OF THE OPERATIONS OF ENGINEERED TIMBER PRODUCTS, FOWLER HAD BEEN REGIONAL MANAGER OF ENGINEERED TIMBER PRODUCTS; LAVER HAD BEEN PRODUCTION MANAGER. NEILSON HAD ALSO BEEN A MEMBER OF MANAGEMENT IN THE SALES END OF ENGINEERED TIMBER PRODUCTS OPERATIONS. NONE OF THE THREE MEN, HOWEVER, HAD ANY FINANCIAL INTEREST IN GLULAM PRODUCTS LIMITED. FOLLOWING THE INCORPORATION OF 244106 MANUFACTURING LIMITED, THAT COMPANY LEASED THE SAME BURLINGTON PREMISES THAT HAD BEEN OCCUPIED BY ENGINEERED PRODUCTS LIMITED. THE NEW COMPANY ALSO LEASED MOST OF THE EQUIPMENT IN THE PLANT WHICH HAD BEEN SEIZED BY THE LANDLORD IN DEFAULT OF RENTAL PAYMENTS BY GLULAM PRODUCTS LIMITED. THERE WAS NO ASSIGNMENT BY THE LANDLORD OF THE LEASE OF GLULAM PRODUCTS LIMITED TO THE NEW COMPANY. RATHER, THE NEW COMPANY NEGOTIATED A NEW LEASE COVERING BOTH THE PREMISES AND EQUIPMENT WHICH HAD BEEN SEIZED BY THE LANDLORD FOR A THREE MONTH PERIOD. IN ADDITION, THE NEW COMPANY PURCHASED SOME \$9,000 WORTH OF THE EQUIPMENT IN THE BURLINGTON PLANT FROM THE LANDLORD AND GAVE BACK A CHATTEL MORTGAGE. FURTHER, 244106 MANUFACTURING LIMITED PURCHASED DIRECTLY FROM THE BANK OF MONTREAL ALL OF THE RAW MATERIAL,

WORK IN PROGRESS AND FINISHED PRODUCT IN THE BURLINGTON PLANT. AS WELL, THE NEW COMPANY MADE NEW ARRANGEMENTS WITH THE COMPANY CONCERNED FOR THE MANUFACTURE OF THE RECREATIONAL EQUIPMENT FORMERLY MADE BY ENGINEERED TIMBER PRODUCTS AT BURLINGTON. GLULAM PRODUCTS LIMITED HAD NO PART IN ANY OF THESE NEGOTIATIONS.

6. ON AND AFTER JUNE 1, 1971, 244106 MANUFACTURING LIMITED COMMENCED OPERATIONS IN THE BURLINGTON PLANT UNDER THE TRADE NAME OF WOODWAY STRUCTURAL COMPONENTS. AT THE TIME GLULAM PRODUCTS LIMITED SHUT DOWN ITS BURLINGTON OPERATION IT HAD APPROXIMATELY THIRTY BARGAINING UNIT EMPLOYEES FOR WHOM THE APPLICANT HAD BEEN THE BARGAINING AGENT UNDER A COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND ENGINEERED TIMBER PRODUCTS DIVISION OF GLULAM PRODUCTS LIMITED, EFFECTIVE FROM MARCH 1, 1970 TO FEBRUARY 29, 1972. WHEN WOODWAY STRUCTURAL COMPONENTS COMMENCED OPERATIONS IT HIRED E. G. ROCKETT, WHO HAD BEEN PLANT SUPERINTENDENT OF ENGINEERED TIMBER PRODUCTS, TO ACT IN A GENERAL SUPERVISORY CAPACITY OVER THE OPERATIONS OF WOODWAY STRUCTURAL COMPONENTS ALONG WITH STANLEY LAVER. KENNETH JOHNSTON, WHO HAD BEEN EMPLOYED IN THE OFFICE OF ENGINEERED TIMBER PRODUCTS, WAS ALSO HIRED BY THE NEW COMPANY. IN ADDITION, SOME TWELVE FORMER EMPLOYEES OF ENGINEERED TIMBER PRODUCTS HAVE BEEN HIRED BY WOODWAY STRUCTURAL COMPONENTS.

7. AT THE TIME THE OPERATIONS OF ENGINEERED TIMBER PRODUCTS WERE SHUT DOWN ON APRIL 16, 1971, GLULAM PRODUCTS LIMITED HAD CONTRACTS WITH SUPPLIERS TO SUPPLY MATERIALS AND CONTRACTS WITH CUSTOMERS WHO HAD PLACED ORDERS. WOODWAY STRUCTURAL COMPONENTS DID NOT TAKE OVER NOR WAS IT ASSIGNED ANY OF THESE CONTRACTS. RATHER, THE MANAGEMENT OF 244106 MANUFACTURING LIMITED NEGOTIATED NEW ARRANGEMENTS FOR THE SUPPLY OF MATERIALS, SOME WITH SUPPLIERS WHO FORMERLY SUPPLIED MATERIALS TO ENGINEERED TIMBER PRODUCTS. WOODWAY, HOWEVER, ALSO NEGOTIATED CONTRACTS FOR THE SUPPLY OF MATERIALS WITH OTHER SUPPLIERS. FURTHER, WOODWAY ENTERED INTO NEW ARRANGEMENTS WITH THE COMPANY CONCERNED FOR THE MANUFACTURE OF RECREATIONAL SLIDES. WOODWAY ALSO SOLICITED ITS OWN BUSINESS, THE EMPHASIS BEING ON RECREATIONAL EQUIPMENT RATHER THAN ENGINEERING STRUCTURAL COMPONENTS. WOODWAY SOLICITED BUSINESS FROM SOME OF THE OLD CUSTOMERS OF ENGINEERED TIMBER PRODUCTS BUT MADE IT QUITE CLEAR TO THE CUSTOMERS THAT 244106 MANUFACTURING LIMITED WAS A NEW COMPANY. ANY ORDERS WHICH THEY SECURED FROM OLD CUSTOMERS OF TIMBER ENGINEERED PRODUCTS WERE MADE UNDER ENTIRELY NEW AND MORE STRINGENT CREDIT ARRANGEMENTS. IN SHORT, WOODWAY STRUCTURAL COMPONENTS DID NOT ACQUIRE BY ASSIGNMENT OR OTHERWISE ANY OF THE OUTSTANDING ORDERS, WORK IN PROGRESS, CUSTOMER LISTS, OR ANYTHING WHICH COULD BE DESCRIBED AS THE "GOODWILL" OF ENGINEERED TIMBER PRODUCTS.

8. REFERENCE WAS MADE TO THE D.H.I. LIMITED CASE OLRB M. R. AUGUST 1964 P. 237, IN WHICH CASE THE BOARD FOUND THAT THERE HAD BEEN A SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 47A (NOW SECTION 55) OF THE LABOUR RELATIONS ACT. IN THAT CASE A COMPANY, CERAMETAL INDUSTRIES LIMITED, DEFAULTED ON A DEBENTURE AND WAS PLACED IN RECEIVERSHIP. THROUGH A SERIES OF COMPLICATED TRANSACTIONS THE WHOLE OF THE UNDERTAKING AND ASSETS OF CERAMETAL INDUSTRIES LIMITED WERE CONVEYED TO D.H. I. LIMITED. THE ASSETS CONSISTED OF LAND AND PREMISES, LEASES, BOOK DEBTS, MACHINERY, EQUIPMENT, FURNITURE, INVENTORIES, RAW MATERIALS, WORK IN PROGRESS, FINISHED PRODUCTS AND ALL GOODWILL CONNECTED WITH THE BUSINESS OF CERAMETAL WHICH INCLUDED ALL CONTRACTS AND AGREEMENTS FOR THE SUPPLY OF GOODS AND THE PERFORMANCE OF SERVICES BY CERAMETAL. THAT IS TO SAY, IT INCLUDED ALL UNFULFILLED ORDERS, WORK IN PROGRESS IN CONNECTION WITH SUCH ORDERS, AND UNFULFILLED ORDERS FOR THE SUPPLY BY OTHERS TO CERAMETAL OF RAW MATERIALS. D. H. I. COVENANTED TO ASSUME, AMONG OTHER LIABILITIES OF CERAMETAL, ALL UNPAID WAGES AND SALARIES OF THE EMPLOYEES OF CERAMETAL. MOREOVER, THE MANUFACTURING OPERATIONS OF CERAMETAL CONTINUED WITHOUT INTERRUPTION AND THE BUSINESS TAKEN OVER BY D.H.I. LIMITED WAS AN OPERATING CONCERN. THE ABOVE OUTLINE MAKES IT ABUNDANTLY CLEAR THAT THE FACTS OF THE INSTANT CASE ARE READILY DISTINGUISHABLE FROM THOSE IN THE D.H.I. LIMITED CASE.

9. THE FACTS OF THE INSTANT CASE ARE VERY MUCH MORE ANALOGOUS TO THOSE IN THE BRANTFORD CONCRETE PIPE COMPANY LIMITED CASE OLRB M.R. DECEMBER 1966 P. 731 AND THOSE IN THE AIRCRAFT METAL SPECIALISTS LIMITED CASE OLRB M.R. SEPTEMBER 1970 P. 702. IN THE FORMER CASE, SEAFORTH CONCRETE PIPE LIMITED WENT INTO RECEIVERSHIP. THE RECEIVER CONVEYED THE LAND AND BUILDING AND CERTAIN EQUIPMENT AND INSTALLATIONS TO BRANTFORD CONCRETE PIPE COMPANY LIMITED. IN THE TRANSACTION, BRANTFORD CONCRETE PIPE DID NOT ACQUIRE AS PART OF THE PURCHASE PRICE ANY OF THE INVENTORY, STOCK-IN-TRADE, CUSTOMER LISTS OR GOODWILL OF SEAFORTH, NOR DID IT TAKE OVER THE BUSINESS OF SEAFORTH AS A GOING CONCERN, THE PLANT HAVING BEEN SHUT DOWN AND UNDER RECEIVERSHIP FOR A PERIOD OF SIX MONTHS. RATHER, BRANTFORD CONCRETE PIPE ONLY ACQUIRED BY PURCHASE, THE PHYSICAL PLANT OF SEAFORTH. IN THE LATTER CASE, FIELD AVIATION COMPANY LIMITED, WHICH HAD A SHEET METAL DIVISION FOR THE REPAIR OF AIRCRAFTS, CLOSED DOWN VARIOUS PARTS OF ITS OPERATIONS CONSISTING OF A CABINET SHOP, AN UPHOLSTERY SHOP, A PAINT SHOP AND A HYDRAULIC SHOP. SOME OF THE FORMER EMPLOYEES OF FIELD AVIATION INCORPORATED AIRCRAFT METAL SPECIALISTS LIMITED AND LEASED PREMISES FROM FIELD AIRCRAFT TOGETHER WITH SOME EQUIPMENT. THERE WAS NO TRANSFER OF INVENTORY OR STOCK AND NO ASSIGNMENT OF ACCOUNTS RECEIVABLE AND NO EXCHANGE OF CUSTOMER LISTS OR ANY GOODWILL. THE NEW COMPANY, AS IN THE INSTANT CASE, INDEPENDENTLY OBTAINED CUSTOMERS, AND WHILE SOME OF THE CUSTOMERS WERE FORMER CUSTOMERS OF FIELD AVIATION, THEY WERE SOLICITED AND OBTAINED WITHOUT ANY INTERVENTION BY FIELD AVIATION. APART FROM THE LEASE OF THE PREMISES AND SOME EQUIPMENT, FIELD

AVIATION HAD CERTAIN CONTRACTS THAT IT WAS OBLIGATED TO COMPLETE AND AIRCRAFT METAL SPECIALISTS LIMITED COMPLETED SOME OF THE WORK UNDER SUBCONTRACT FROM FIELD AVIATION, BUT ON THE BASIS THAT ITS BIDS FOR THE WORK WERE COMPETITIVE. THE BOARD NOTED THAT THERE HAD NOT BEEN A "CONTINUUM" OF BUSINESS IN THE SENSE CONTEMPLATED BY THE ACT. THE BOARD FURTHER STATED THAT NEITHER THE FACT OF THE UTILIZATION OF THE EQUIPMENT AND PREMISES NOR THE FACT THAT AIRCRAFT METAL SPECIALISTS LIMITED COMPLETED CERTAIN WORK UNDER SUBCONTRACT ON A COMPETITIVE BASIS CONSTITUTED A SALE OF A BUSINESS. IN BOTH THE BRANTFORD CONCRETE PIPE COMPANY LIMITED CASE AND THE AIRCRAFT METAL SPECIALISTS LIMITED CASE, THE BOARD FOUND THAT THERE WAS NOT A SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 47A OF THE ACT.

10. HAVING REGARD TO THE FOREGOING DECISIONS OF THE BOARD AND THE FACTS OF THE INSTANT CASE, THE BOARD FINDS THAT THERE HAS NOT BEEN A SALE OF A BUSINESS BY ENGINEERED TIMBER PRODUCTS, A DIVISION OF GLULAM PRODUCTS LIMITED TO WOODWAY STRUCTURAL COMPONENTS WITHIN THE MEANING OF SECTION 55 OF THE LABOUR RELATIONS ACT. ACCORDINGLY THE BOARD FURTHER FINDS THAT THE APPLICANT HAS ACQUIRED NO BARGAINING RIGHTS FOR ANY OF THE EMPLOYEES OF WOODWAY STRUCTURAL COMPONENTS.

963-71-R: HOTEL & RESTAURANT EMPLOYEE'S BARTENDERS' INTERNATIONAL UNION, LOCAL 280, A.F.L. C.I.O. C.L.C. (APPLICANT) V. VERED & HARVEY COMPANY LIMITED KNOWN AS ALMONT HOTEL (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER O. HODGES: NOVEMBER 19, 1971.

1. THE PARTIES AGREED AT A MEETING WITH THE EXAMINER HELD ON OCTOBER 18, 1971 THAT GERALD O'CALLAGHAN AND THOMAS HENNESSEY DO NOT EXERCISE MANAGERIAL FUNCTIONS AND ARE NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS, AND AGREED TO THE INCLUSION OF BOTH EMPLOYEES ON THE LISTS FILED BY THE RESPONDENT.

2. THERE WAS FILED WITH THE BOARD A STATEMENT OF DESIRE OR PETITION. THIS DOCUMENT WAS SIGNED BY A SUFFICIENT NUMBER OF EMPLOYEES WHO HAD ALSO SIGNED MEMBERSHIP CARDS IN THE UNION TO CAUSE THE BOARD TO INQUIRE INTO THE ORIGINATION OF THE PETITION AND THE MANNER IN WHICH THE SIGNATURES WERE OBTAINED SINCE, IF VALID, THE PETITION WOULD LEAVE THE UNION WITH UNQUESTIONED EVIDENCE OF MEMBERSHIP BELOW THAT REQUIRED FOR OUTRIGHT CERTIFICATION.

3. BEFORE TAKING UP THE QUESTION OF THE VALIDITY OF THE PETITION, WE WISH TO MAKE SOME COMMENT UPON THE FORM ADOPTED IN THESE PROCEEDINGS TO EXPRESS OPPOSITION TO THE UNION. THE DOCUMENT FILED BY CERTAIN EMPLOYEES NOT ONLY CONTAINS A STATEMENT INDICATING OPPOSITION TO THE APPLICATION FOR CERTIFICATION AND REVOCATION OF MEMBERSHIP BUT ALSO EMBODIES ALLEGATIONS OF MISCONDUCT, COMMONLY CALLED CHARGES, HAVING TO DO WITH THE METHODS OF SOLICITING MEMBERSHIP SAID TO HAVE BEEN EMPLOYED BY PERSONS ACTING ON BEHALF OF THE APPLICANT.

4. THE QUESTIONS RAISED BY A PETITION AND THOSE ARISING OUT OF CHARGES CONSTITUTE TWO DISTINCT ISSUES WHICH NORMALLY OUGHT TO BE DEALT WITH SEPARATELY. FURTHERMORE, THE LONG ESTABLISHED PROCEDURE OF THE BOARD IN DEALING WITH EMPLOYEES' PETITIONS, DESIGNED AS IT IS TO PROTECT THE ANONYMITY OF THE PERSONS INVOLVED, DIFFERS MARKEDLY FROM THE EQUALLY LONG ESTABLISHED PRACTICE EMPLOYED WHEN DEALING WITH CHARGES. THESE TWO PROCEDURES ARE NOT READILY RECONCILABLE. THE INCLUSION IN ONE DOCUMENT THEREFORE OF A PETITION AND OF CHARGES IS NOT A PROPER PROCEDURE AND IS TO BE AVOIDED. IN THE PARTICULAR CIRCUMSTANCES OF THE PRESENT CASE, THE INCLUSION OF BOTH ISSUES IN THE MATERIAL FILED DOES NOT EFFECT THE OUTCOME.

5. WITH RESPECT TO THE CHARGES, THE BOARD HAVING HEARD THE EVIDENCE AND THE SUBMISSIONS OF THE PARTIES UNANIMOUSLY DISMISSED THEM AT THE HEARING.

6. THOMAS HENNESSEY SPOKE IN SUPPORT OF THE PETITION. HE STATED THAT OTHER EMPLOYEES OF THE RESPONDENT SPOKE TO HIM ABOUT THE WAY TO GO ABOUT WITHDRAWAL FROM THE UNION. HE ADVISED THEM TO GET A LAWYER AND HE THEN CONTACTED ONE WHOM HE KNEW. THE TEXT OF THE PETITION WAS THEN PREPARED IN THE LAWYER'S OFFICE.

7. THERE IS A TOTAL OF SIX SIGNATURES ON THE PETITION. HENNESSEY STATED THAT HE, TOGETHER WITH THREE OTHERS, SIGNED THE PETITION IN THE LAWYER'S OFFICE. FOR THE BOARD'S PURPOSE OF NON-DISCLOSURE, EACH SIGNATURE IS ASSIGNED A NUMBER ACCORDING TO THE ORDER IN WHICH IT APPEARS ON THE PETITION. HENNESSEY'S SIGNATURE IS NUMBERED 3 ON THE PETITION. HE STATED THAT WITH HIM, AT THE TIME HE SIGNED, WERE THOSE EMPLOYEES WHOSE SIGNATURES ON THE PETITION ARE NUMBERED 1, 2 AND 6.

8. JOHN SKOLNEY TESTIFIED THAT HE ATTENDED THE LAW OFFICE WITH HENNESSEY. SKOLNEY IS NUMBER 4 ON THE LIST. HE REMEMBERED THAT HENNESSEY AND THE NUMBER 2 SIGNATORY WERE PRESENT WITH HIM. HENNESSEY AND SKOLNEY THEREFORE ACCOUNT FOR FIVE OF THE SIX SIGNATURES THAT APPEAR ON THE PETITION.

9. HARRISON SHEFFIELD WAS CALLED ON BEHALF OF THE PETITIONERS.

INITIALLY, AT LEAST, THIS WITNESS APPEARED TO BE IN A SOMEWHAT CONFUSED STATE IN THE WITNESS BOX. HE AT FIRST STATED, AFTER BEING GIVEN AN OPPORTUNITY TO READ IT, THAT HE HAD NOT SEEN THE PETITION BEFORE. HOWEVER, WHEN HIS ATTENTION WAS DRAWN TO WHAT PURPORTED TO BE HIS SIGNATURE, HE BECAME MORE POSITIVE IN HIS TESTIMONY. HIS EVIDENCE WAS THAT HE HAD SIGNED THE PETITION AT THE RESPONDENT'S HOTEL. HE REMEMBERED BEING AT THE LAWYER'S OFFICE THE DAY BEFORE THE HEARING AND AT SOME PREVIOUS TIME WHICH HE THOUGHT WAS "LAST WEEK". HE REMEMBERED SIGNING A DOCUMENT IN THE LAWYER'S OFFICE BUT STATED THAT IT WAS DIFFERENT TO THE PETITION WHICH HE HAD BEFORE HIM. HE REFERRED TO IT AS A STATEMENT. HE WAS VERY POSITIVE THAT HE HAD SIGNED THE PETITION AT THE RESPONDENT'S HOTEL. HE SAID HE HAD FOUND IT JUST LYING ON A LITTLE SERVING WINDOW AT THE BAR COUNTER AND HAD SIGNED IT THERE. HE SAID THE PETITION WAS LEFT WHERE IT WOULD BE IN THE PLAIN VIEW OF MANAGEMENT. HE COULD NOT REMEMBER WHETHER THERE WERE OTHER SIGNATURES ON THE PETITION WHEN HE SIGNED. HIS SIGNATURE IS FIFTH IN ORDER ON THE PETITION. HE WAS VERY POSITIVE THAT HE HAD NOT DISCUSSED THE PETITION WITH ANYONE IN MANAGEMENT OR WITH OTHER EMPLOYEES. HE WAS EMPHATIC IN STATING THAT HE SIGNED BECAUSE HE WANTED TO GET OUT OF THE UNION.

10. THERE IS NO DOUBT THAT THE PETITION ORIGINATED AMONG THE EMPLOYEES THEMSELVES AND THAT ITS CONCEPTION WAS FREE OF MANAGEMENT INFLUENCE. AS TO THE MANNER IN WHICH THE SIGNATURES WERE OBTAINED - WHAT IS SOMETIMES ALSO REFERRED TO AS THE CIRCULATION OF THE PETITIONS AMONG THE EMPLOYEES - THERE IS SOME QUESTION. HENNESSEY AND SKOLNEY TESTIFIED THAT EACH OF THEM SIGNED IN THE LAWYER'S OFFICE TOGETHER WITH THREE OTHER EMPLOYEES FOR A TOTAL OF FIVE OUT OF SIX NAMES. THE SIXTH NAME IN ORDER ON THE PETITION IS ONE OF THOSE SAID TO HAVE BEEN SIGNED IN THE LAWYER'S OFFICE, SO THAT SHEFFIELD'S SIGNATURE IS SANDWICHED BETWEEN TWO OF THOSE SAID TO HAVE BEEN PLACED ON THE PETITION AT THE LAWYER'S OFFICE. THERE WERE LINES PROVIDED ON THE PETITION FOR SIGNATURES BUT THERE IS NO EVIDENCE THAT THE SIGNATURES WERE IN FACT PLACED ON THE PETITION IN THE SEQUENCE IN WHICH THEY APPEAR SO THAT TOO MUCH SIGNIFICANCE CANNOT BE ATTACHED TO THE POSITION OF THE SIGNATURES ON THE DOCUMENT.

11. HENNESSEY'S TESTIMONY WAS THAT SO FAR AS HE KNEW, THE PETITION HAD NOT BEEN TAKEN FROM THE LAWYER'S OFFICE. OPPOSED TO THAT IS SHEFFIELD'S TESTIMONY THAT HE SIGNED THE PETITION AT THE HOTEL. HE COULD NOT SAY THAT THERE WERE OTHER SIGNATURES ON IT AT THE TIME. THERE WAS NO SUGGESTION IN THE TESTIMONY OF HENNESSEY OR SKOLNEY THAT SHEFFIELD SIGNED WITH THEM.

12. IT IS TO BE REMEMBERED THAT ALL OF THESE WITNESSES APPEARED IN SUPPORT OF THE PETITION. THERE IS NO REAL CONFLICT WITH RESPECT TO THE MANNER IN WHICH THE SIGNATURES WERE OBTAINED NOR INDEED WITH

RESPECT TO WHERE THE SIGNATORIES WERE AT THE TIME OF SIGNING. THERE IS, HOWEVER, A HIATUS IN THE EVIDENCE WITH RESPECT TO THE QUESTION AS TO HOW THE DOCUMENT WAS TAKEN FROM THE LAWYER'S OFFICE TO THE HOTEL AND BACK AGAIN. THERE IS ALSO A LACK OF EVIDENCE AS TO WHO IT WAS THAT LEFT THE PETITION ON THE BAR COUNTER WHERE SHEFFIELD FOUND AND SIGNED IT, AND WHO LATER REMOVED IT.

13. IN ATTEMPTING TO DECIDE WHAT WEIGHT IS TO BE GIVEN TO A PETITION WHICH, IN EFFECT, PURPORTS TO REVERSE OR REVOKE THE PREVIOUSLY EXPRESSED INTENT OF THE PETITIONERS TO JOIN THE UNION, AS EVIDENCED BY THE MEMBERSHIP CARDS SIGNED BY THEM AND FILED WITH THE BOARD, THE BOARD HAS FELT THAT IT OUGHT TO SATISFY ITSELF ON THE EVIDENCE THAT A PETITION FILED IN OPPOSITION TO AN APPLICATION FOR CERTIFICATION IS FREE BOTH IN ITS ORIGINATION AND ITS CIRCULATION FROM ANY INFLUENCE OR INTERFERENCE ON THE PART OF MANAGEMENT. FOR THAT REASON, THE QUESTION OF THE CUSTODY OF THE PETITION THROUGHOUT THE PERIOD WHEN IT IS BEING SIGNED HAS ALWAYS BEEN REGARDED AS A KEY ONE IN THE BOARD'S DETERMINATIONS. THE LACK OF EVIDENCE RESPECTING CUSTODY IN THE CIRCUMSTANCES OF THE PRESENT CASE IS SUCH THAT WE CANNOT FIND THE PETITION CASTS SUCH DOUBT UPON THE EVIDENCE OF MEMBERSHIP AS TO REQUIRE THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

14. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

15. THE BOARD FURTHER FINDS THAT ALL TAPMEN, BARTENDERS' BEVERAGE WAITERS, BAR-BOYS, IMPROVERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT MANAGER PERSONS ABOVE THE RANK OF MANAGER, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

16. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON SEPTEMBER 22, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

17. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER H. F. IRWIN: NOVEMBER 19, 1971.

I DISSENT.

THOMAS HENNESSEY, AN EMPLOYEE IN THE BARGAINING UNIT, GAVE EVIDENCE UNDER OATH IN RESPECT OF THE ORIGATION, PREPARATION AND CIRCULATION OF THE PETITION IN OPPOSITION TO CERTIFICATE OF THE APPLICANT UNION AND FILED WITH THE BOARD BY A GROUP OF EMPLOYEES.

MR. HENNESSEY FURTHER TESTIFIED THAT HIS SIGNATURE IS #3 ON THE PETITION. HE STATED THAT TWO OTHER EMPLOYEES IN THE BARGAINING UNIT, SIGNATURES #1 AND #2, SIGNED THE PETITION AT THE SAME TIME IN HIS PRESENCE IN THEIR LAWYER'S OFFICE. THESE SIGNATURES ARE NOT CONTESTED AND ACCORDING TO THE EVIDENCE REPRESENT THE TRUE WISHES OF THESE THREE EMPLOYEES.

ON THE EVIDENCE ADDUCED AT THE HEARING, THERE IS NOT EVEN A SUGGESTION THAT MANAGEMENT HAS IN ANY WAY PARTICIPATED IN OR INFLUENCED THE ORIGATION, PREPARATION OR CIRCULATION OF THE PETITION.

HARRISON SHEFFIELD WAS OF THE OPINION THAT HE SIGNED THE PETITION AT THE RESPONDENT'S HOTEL WHERE IT WAS LYING ON THE COUNTER. HE ALSO STATES THAT HE VISITED THE LAWYER'S OFFICE WHERE HE SIGNED A DOCUMENT. WHETHER HE SIGNED THE PETITION BEFORE THE BOARD AT THE HOTEL OR THE LAWYER'S OFFICE IS NOT MATERIAL BECAUSE HE STATED MOST EMPHATICALLY THAT HE SIGNED THE PETITION BECAUSE HE WANTED TO GET OUT OF THE UNION. HIS SIGNATURE, THEREFORE, REPRESENTS HIS TRUE WISHES IN THE MATTER WHICH IS THE SOLE PURPOSE OF THE BOARD'S ENQUIRY.

HOWEVER, EVEN IF SHEFFIELD'S SIGNATURE ON THE PETITION IS DISALLOWED, ON THE BASIS OF THE BOARD'S POLICY, IT DOES NOT NECESSARILY INVALIDATE THE SIGNATURES PLACED ON THE PETITION PRIOR TO HIS.

IN THE POCOCK DAIRY LIMITED CASE, O.L.R.B. MONTHLY REPORT, MARCH 1961, P. 443, THE BOARD STATED:

"THE APPLICANT UNION FILED EVIDENCE OF MEMBERSHIP FOR NINE OF THE FOURTEEN PERSONS INCLUDED IN THE BARGAINING UNIT ON THE DATE OF THE APPLICATION.

A DOCUMENT SUBMITTED BY THE OBJECTORS AS INDICATING OPPOSITION TO THE CERTIFICATION OF THE APPLICANT, CONTAINS THE SIGNATURES OF TEN PERSONS ALL OF WHOM, SAVE ONE, ARE INCLUDED IN THE BARGAINING UNIT. THIS PERSON, WHO IS NOT IN THE BARGAINING UNIT, IS A FOREMAN EXERCISING MANAGERIAL FUNCTIONS AND ON THE EVIDENCE WAS THE SIXTH PERSON TO SUBSCRIBE HIS

NAME TO THE DOCUMENT. HIS SIGNATURE APPEARS IN THE COLUMN OF TEN SIGNATURES AS THE SIXTH DOWN FROM THE FIRST AND THE EVIDENCE INDICATES THAT HE IN FACT SIGNED THE DOCUMENT AFTER AND NOT IN THE PRESENCE OF THE FIVE PERSONS WHOSE SIGNATURES PRECEDE HIS.

APART FROM THE BARE FACT OF THE FOREMAN SIGNING THE DOCUMENT, THERE IS NO EVIDENCE WHATEVER FROM WHICH IT COULD BE FOUND OR REASONABLY INFERRED THAT MANAGEMENT PARTICIPATED IN THE ORIGINATION, PREPARATION OR CIRCULATION OF THE DOCUMENT. THE QUESTION IN ISSUE, THEREFORE, IS WHAT WEIGHT SHOULD BE GIVEN TO THE SIGNATURES TO THE DOCUMENT UNDER THE CIRCUMSTANCES OF THIS CASE WHEN IT HAS BEEN SIGNED BY A REPRESENTATIVE OF MANAGEMENT. IN THE PAST, THE BOARD HAS IN SOME CIRCUMSTANCES AND PARTICULARLY WHERE IT WAS OTHERWISE SATISFIED WITH THE IDENTIFICATION OF THE SIGNATURES, GIVEN WEIGHT TO SO MANY OF THE SIGNATURES AS IT WAS SATISFIED WERE SUBSCRIBED TO THE DOCUMENT PRIOR IN TIME TO WHEN IT WAS SIGNED BY THE MANAGEMENT REPRESENTATIVE. IT IS OUR VIEW THAT, IN THE CIRCUMSTANCES OF THE INSTANT CASE, WE MUST GIVE WEIGHT TO SUCH OF THE SIGNATURES AS ARE MATERIAL AND WHICH PRECEDE THAT OF THE SIGNATURE OF THE FOREMAN. IN THIS RESPECT, THERE IS SUFFICIENT "OVERLAP" AMONG THE FIRST FIVE SIGNATURES ON THE DOCUMENT TO BRING THE NUMBER OF UNCHALLENGED UNION MEMBERSHIP CARDS TO LESS THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT."

IN THE UNIVERSAL COOLER, A DIVISION OF SNO-BOY COOLERS LIMITED CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1967 AT P. 546 THE BOARD STATED AT PARAGRAPH 9:

"EVEN IF IT WAS ESTABLISHED (AS THE BOARD HAS ASSUMED IN THIS CASE) THAT THE PETITION WAS ORIGINATED COMPLETELY FREE OF ANY UNDUE INFLUENCE OR PARTICIPATION BY MANAGEMENT, WHILE SIGNATURES OBTAINED PRIOR TO THE SIGNATURE OF A MEMBER OF MANAGEMENT WOULD BE GIVEN EFFECT TO, THE BOARD IN PREVIOUS CASES HAS NOT GIVEN EFFECT TO THE SIGNATURE OF ANY EMPLOYEE WHO SIGNED THE PETITION SUBSEQUENT

TO A MEMBER OF MANAGEMENT (SEE POCOCK DAIRY LIMITED CASE, O.L.R.B. MONTHLY REPORT, MARCH 1961, P. 443)."

IN THE RIVARD CLEANERS LIMITED CASE, O.L.R.B. MONTHLY REPORT, APRIL 1966 AT P. 19 THE BOARD STATED AT PARAGRAPH 7 AS FOLLOWS:

"OF EVEN GREATER POTENTIAL CONSEQUENCE, HOWEVER, IS THE FACT THAT THE SIGNATURE OF ETHEL RUSHLOW APPEARS AS THE TENTH NAME ON THE PETITION. BOTH DERUSHIE AND MRS. SCHMIDT TESTIFIED THAT THEY SECURED HER SIGNATURE ON THE PETITION ON SUNDAY, DECEMBER 5TH AT HER HOME. THE EVIDENCE SUPPORTS A FINDING, HOWEVER, THAT A SUFFICIENT NUMBER OF EMPLOYEES CLAIMED IN MEMBERSHIP BY THE APPLICANT PLACED THEIR SIGNATURES ON THE PETITION PRIOR TO MRS. RUSHLOW SO THAT IF THE BOARD OTHERWISE FINDS THE PETITION WEAKENS OR QUALIFIES THE EVIDENCE OF MEMBERSHIP SUBMITTED FOR THOSE EMPLOYEES, THERE REMAINS UNCONTESTED EVIDENCE OF MEMBERSHIP FOR LESS THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT. IT IS THEREFORE UNNECESSARY FOR THE BOARD TO CONSIDER WHETHER THE FACT OF MRS. RUSHLOW'S SIGNATURE ON THE PETITION INFLUENCED THE EMPLOYEES WHO SUBSEQUENTLY SIGNED THE DOCUMENT."

IN THE INSTANT CASE, THE FIRST THREE SIGNATURES ARE SUFFICIENT TO REDUCE THE APPLICANT'S UNCHALLENGED EVIDENCE OF MEMBERSHIP TO LESS THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT. CONSEQUENTLY, HAVING REGARD TO THE BOARD'S POLICY AS ENUNCIATED IN THE ABOVE QUOTED DECISIONS, I WOULD HAVE DIRECTED A REPRESENTATION VOTE. THE EMPLOYEES WOULD BE ASKED IF THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT UNION.

NOTHING I HAVE SAID ABOVE IS TO BE CONSTRUED OR INTERPRETED THAT I WOULD NOT GIVE WEIGHT TO SIGNATURES 4, 5 AND 6 IF IT HAD BEEN NECESSARY FOR ME TO MAKE A FINDING IN RESPECT OF THEIR VALIDITY.

1234-71-R: CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 175, CHARTERED BY AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. M. LOEB (LONDON) LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: L. VICTOR PATHE AND JOSEPH O'DONNELL FOR THE APPLICANT, R. C. FILION AND P. S. MCTAIT FOR THE RESPONDENT.

DECISION OF THE BOARD: NOVEMBER 24, 1971.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

2. AT THE HEARING IN THIS MATTER, THE RESPONDENT REQUESTED THAT THE BARGAINING UNIT BE CONFINED TO THE EMPLOYEES OF THE RESPONDENT COMPANY IN ITS K-MART FOODS DIVISION IN VESPRE TOWNSHIP. THE APPLICANT OPPOSED THIS REQUEST. IT IS THE BOARD'S REGULAR PRACTICE TO RESTRICT BARGAINING UNITS TO A DIVISION OF AN EMPLOYER WHERE THE EMPLOYER TRADES UNDER THE NAME OF THAT DIVISION. A FACTOR WHICH THE BOARD CONSIDERS IN MAKING SUCH A DETERMINATION IS WHETHER THE BARGAINING UNITS SO RESTRICTED WOULD INCLUDE ALL THE EMPLOYEES OF THE EMPLOYER WHO ARE EMPLOYED AT THE PLANT OR LOCATION OUT OF WHICH THE DIVISION OPERATES.

3. FOR THE REASONS SET OUT ABOVE AND HAVING REGARD TO THE BOARD'S DECISION DATED NOVEMBER 8, 1971 IN AN APPLICATION INVOLVING THE SAME PARTIES, BOARD FILE 591-71-R, THE BOARD THEREFORE FINDS THAT ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN THE RETAIL STORES OF ITS K-MART FOODS DIVISION IN VESPRE TOWNSHIP REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON NOVEMBER 17, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

5. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

587-71-U: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (COMPLAINANT) V. SUN PARLOUR GREENHOUSE GROWERS' CO-OPERATIVE LIMITED, ARMSTRONG PRODUCE COMPANY LIMITED, A.M.C. PRODUCE SHIPPERS INCORPORATED, MASTRONARDI PRODUCE LIMITED, GARDEN ACRE SALES AN AGENCY OF ONTARIO GREENHOUSE PRODUCERS MARKETING BOARD (RESPONDENTS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS J.D. BELL AND A. MAIN.

APPEARANCES AT THE HEARING: J. A. RYDER AND BILL HANLEY FOR THE COMPLAINANT; JAMES N. BARTLET, Q.C. AND OLIVER SHARP FOR SUN PARLOUR GREENHOUSE GROWERS' Co-OPERATIVE LIMITED; T.C. ODETTE, JR., Q.C. FOR ARMSTRONG PRODUCE COMPANY LIMITED, A.M.C. PRODUCE SHIPPERS INCORPORATED AND MASTRONARDI PRODUCE LIMITED; LEWIS S. GEIGER FOR GARDEN ACRE SALES, AN AGENCY OF ONTARIO GREENHOUSE PRODUCERS MARKETING BOARD.

DECISION OF THE BOARD: NOVEMBER 18, 1971.

1. THIS IS AN APPLICATION UNDER SECTION 79 (FORMERLY SECTION 65) OF THE LABOUR RELATIONS ACT. DURING THE HEARING THE BOARD WAS ADVISED THAT THE COMPLAINANT AND THE RESPONDENT, GARDEN ACRE SALES, AN AGENCY OF ONTARIO GREENHOUSE PRODUCERS MARKETING BOARD, HAD AGREED TO THE WITHDRAWAL OF THE COMPLAINT INsofar AS IT CONCERNED THE RESPONDENT, GARDEN ACRE SALES, AN AGENCY OF ONTARIO GREENHOUSE PRODUCERS MARKETING BOARD. ACCORDINGLY, THE COMPLAINT AGAINST THAT RESPONDENT IS WITHDRAWN ON CONSENT OF THE PARTIES AND WITH LEAVE OF THE BOARD.

2. AT THE CONCLUSION OF THE COMPLAINANT'S EVIDENCE, MR. T.C. ODETTE, COUNSEL FOR ARMSTRONG PRODUCE COMPANY LIMITED (HEREINAFTER REFERRED TO AS "ARMSTRONG"), A.M.C. PRODUCE SHIPPERS INCORPORATED (HEREINAFTER REFERRED TO AS "A.M.C.") AND MASTRONARDI PRODUCE LIMITED (HEREINAFTER REFERRED TO AS "MASTRONARDI"), MOVED THAT THE BOARD WAS WITHOUT JURISDICTION TO ENTERTAIN THE PROCEEDINGS AGAINST THE RESPONDENTS, ARMSTRONG, A.M.C. AND MASTRONARDI, BECAUSE THE PROCEEDINGS CONSTITUTED A NULLITY INsofar AS THOSE RESPONDENTS WERE CONCERNED. MR. ODETTE SUBMITTED THAT THE PROCEEDINGS WERE GOVERNED BY THE PARTICULARS IN THE COMPLAINT AND THAT THE ONLY PARTICULARS ALLEGED WERE WITH RESPECT TO THE RESPONDENT, SUN PARLOUR GREENHOUSE GROWERS' Co-OPERATIVE LIMITED (HEREINAFTER REFERRED TO AS "SUN PARLOUR"), AND ACCORDINGLY THE BOARD WAS WITHOUT JURISDICTION. IN ADDITION, MR. ODETTE, ON BEHALF OF HIS CLIENTS, MOVED FOR A NONSUIT ON SEPARATE GROUNDS.

3. MR. BARTLET, THE SOLICITOR FOR SUN PARLOUR, INDICATED THAT HE WOULD BE CALLING SEVERAL WITNESSES IN DEFENCE OF SUN PARLOUR'S POSITION.

4. MR. ODETTE REQUESTED THAT THE BOARD RULE ON HIS MOTION PRIOR TO ANY EVIDENCE BEING CALLED BY THE RESPONDENT, SUN PARLOUR, AND INDICATED THAT ONE OF THE PURPOSES IN REQUESTING A RULING PRIOR TO THE EVIDENCE SUBMITTED BY SUN PARLOUR WAS TO PROTECT MR. ODETTE'S CLIENTS FROM ANY PREJUDICE WHICH MIGHT ARISE FROM EVIDENCE CALLED BY

SUN PARLOUR. IN ACCORDANCE WITH OUR USUAL PRACTICE WE PUT MR. ODETTE'S CLIENTS TO AN ELECTION AS TO WHETHER OR NOT THEY WOULD CALL EVIDENCE AND THEY ELECTED NOT TO CALL EVIDENCE. WE THEN RESERVED JUDGEMENT AND ADJOURNED THE HEARING IN ORDER TO DEAL WITH THE ARGUMENT ADVANCED BY THE PARTIES, AND TO ENABLE THE PARTIES TO SUBMIT FURTHER WRITTEN ARGUMENT IF THEY SO DESIRED. THE PARTIES HAVE SUBMITTED WRITTEN ARGUMENT WHICH WE HAVE ALSO CONSIDERED.

5. THE FIRST MATTER RAISED BY MR. ODETTE GOES TO THE ISSUE AS TO WHETHER THE BOARD HAS JURISDICTION, AND ARISES FROM WHAT MR. ODETTE HAS DESCRIBED AS A PROCEDURAL DEFICIENCY IN THE FORMAL COMPLAINT. AS WE UNDERSTAND THE OBJECTION IT GOES TO THE BOARD'S FUNDAMENTAL JURISDICTION AS TO WHETHER THE COMPLAINT IS SUFFICIENT TO INDICATE THAT THE SUBJECT MATTER IS WITHIN THE PURVIEW OF THE LABOUR RELATIONS ACT AND ACCORDINGLY PROPERLY BEFORE THIS BOARD. WE NOTE THAT IN ANSWER TO THE WRITTEN COMPLAINT FILED THAT THE RESPONDENTS, ARMSTRONG, A.M.C. AND MASTRONARDI, FILED A FORMAL REPLY, IN EFFECT PLEADING TO THE ALLEGATIONS CONTAINED IN THE COMPLAINT (ALTHOUGH CONTAINED IN THE REPLY THERE IS A DENIAL OF JURISDICTION) AND SUBSEQUENTLY WHEN THIS MATTER CAME ON FOR HEARING MR. ODETTE, ON BEHALF OF THOSE RESPONDENTS, PARTICIPATED IN THE HEARING AND CROSS-EXAMINED WITNESSES CALLED BY THE COMPLAINANT.

6. THE FACTS ARE AS FOLLOWS: ON JUNE 17, 1971, THE COMPLAINANT FILED A FORMAL COMPLAINT. ON JULY 13, 1971, THE COMPLAINANT BY LETTER ADVISED THE BOARD AS FOLLOWS:

"IN ORDER THAT THE BOARD MAY HAVE ALL THE APPROPRIATE PARTIES BEFORE IT WE HAVE ENCLOSED HEREWITH FOR FILING AN AMENDED COMPLAINT UNDER SECTION 65 IN WHICH ALL OF THE ABOVE-NAMED ORGANIZATIONS ARE INCLUDED.

SO THAT THE BOARD MAY APPRECIATE THE CIRCUMSTANCES GIVING RISE TO THE COMPLAINT IT MIGHT BE USEFUL AT THIS STAGE TO PROVIDE THE BOARD WITH OUR UNDERSTANDING OF THE RELATIONSHIP BETWEEN THE RESPONDENTS. ARMSTRONG, MASTRONARDI, AND SUN PARLOUR ARE ALL ENGAGED IN THE BUSINESS OF GROWING VEGETABLES. FOR THE PURPOSE OF SIMPLICITY THEIR BUSINESSES MAY BE DIVIDED INTO TWO ASPECTS.

(A) HOTHOUSE PRODUCE

(B) FIELD PRODUCE.

...

IN TURN THE THREE GROWING COMPANIES TOGETHER FORMED A. M. C. TO BE THE MARKETING AGENCY FOR THE FIELD PRODUCE.

THE OFFICE WORK OF BOTH A. M. C. AND GARDEN ACRES WAS PERFORMED BY THE EMPLOYEES OF SUN PARLOUR WHO IN ADDITION PERFORMED THE OFFICE WORK GENERATED BY THE WORK OF SUN PARLOUR ITSELF.

IN ADDITION WE UNDERSTAND THAT SUN PARLOUR CONSISTS OF A LARGE NUMBER OF GROWERS OF VEGETABLES IN ESSEX COUNTY."

THE ENCLOSED AMENDED COMPLAINT NAMED ALL THE RESPONDENTS AND PROVIDED INTER ALIA:

4. CONCISE STATEMENT OF THE NATURE OF EACH ACT OR OMISSION COMPLAINED OF
 - (A) ON JUNE 14, 1971 THE GRIEVORS WERE DISCHARGED BY OLIVER SHARP, PRESIDENT OF SUN PARLOUR, CONTRARY TO THE PROVISIONS OF SECTION 50 (A) OF THE LABOUR RELATIONS ACT IN THAT HE DID DISCHARGE THE GRIEVORS BECAUSE THEY WERE MEMBERS OF THE COMPLAINANT AND EXERCISING THEIR RIGHTS UNDER THIS ACT.
 - (B) FOLLOWING JUNE 14, 1971 UNTIL THE PRESENT TIME THE RESPONDENT, SUN PARLOUR, OR, IN THE ALTERNATIVE THE RESPONDENT A. M. C. PRODUCE SHIPPERS INCORPORATED, HAS REFUSED TO EMPLOY ANY OF THE GRIEVORS WITH THE EXCEPTION OF
 - (1) MARY COLASANTE
 - (2) BETTY ANN DURANSKY
 - (3) LINDA DRIEDGER

THE RESPONDENTS HAVE REFUSED TO RE-EMPLOY THE BALANCE OF THE GRIEVORS FOR THE SOLE REASON THAT THEY ARE MEMBERS OF THE COMPLAINANT AND EXERCISING THEIR RIGHTS UNDER THIS ACT.

4. (c) SINCE MAY 7, 1971 ALL OF THE RESPONDENTS HAVE, THROUGH THEIR OFFICERS, DEALT WITH THE AGGRIEVED PERSONS IN A MANNER CONTRARY TO THE PROVISIONS OF SECTION 48 AND 52 OF THE LABOUR RELATIONS ACT IN THAT THEY HAVE INTERFERED WITH THE FORMATION AND SELECTION OF THE EMPLOYEES OF A TRADE UNION OF THEIR CHOICE AND THEY HAVE SOUGHT BY INTIMIDATION AND OTHER UNLAWFUL MEANS TO COMPARE THE GRIEVORS TO RENOUNCE THEIR MEMBERSHIP IN THE COMPLAINANT TRADE UNION.

THE FACTS UPON WHICH EACH OF THE ABOVE-NOTED COMPLAINTS ARE BASED MAY BE SET OUT AS FOLLOWS;

- (1) MAY 7, 1971, MR. GUY DERBYSHIRE, PLANT MANAGER OF SUN PARLOUR, REMOVED THE NOTICE OF THE COMPLAINANT'S APPLICATION FOR CERTIFICATION FROM THE PREMISES OF SUN PARLOUR WHERE IT HAD BEEN POSTED.
- (2) ON MAY 7, 1971, AT APPROXIMATELY 4:30 P.M. MR. DERBYSHIRE SUMMONSED PETER BORDATO AND JIM STENGER, TWO OF THE GRIEVORS, TO HIS OFFICE AND ADVISED THEM IT WAS WRONG TO HAVE A UNION REPRESENT THE EMPLOYEES IN THE OFFICE OF SUN PARLOUR BECAUSE THE OTHER EMPLOYEES OF SUN PARLOUR MIGHT THEN SEEK REPRESENTATION BY A TRADE UNION. MR. DERBYSHIRE ON THIS OCCASION CONTINUED TO SAY THAT THERE WILL NEVER BE A UNION REPRESENTING THE EMPLOYEES OF THE RESPONDENT, SUN PARLOUR.
- (3) ON SATURDAY, MAY 8, 1971, MARY COLASANTE WAS ASKED BY MEMBERS OF THE BOARD OF DIRECTORS OF THE RESPONDENT SUN PARLOUR TO TAKE A PETITION AMONGST THE GRIEVORS WITH A VIEW TO DEFEATING THEIR APPLICATION FOR CERTIFICATION.
- (4) DURING THE AFTERNOON OF SATURDAY, MAY 8, 1971, MR. VERN TOEWS, A MEMBER OF THE BOARD OF DIRECTORS OF THE RESPONDENT, SUN PARLOUR AND AN OFFICER OF THE RESPONDENT GARDEN ACRE SALES, HAD VISITED PETER BORDATO, AT THE LATTER'S HOME AND INFORMED HIM THAT IF THE OFFICE EMPLOYEES OF THE RESPONDENT SUN PARLOUR BELONG TO A UNION THE OFFICE WORK DONE BY THEM WOULD BE CONTRACTED OUT OR THAT OTHER MEANS WOULD BE USED IN ORDER TO PREVENT A UNION FROM REPRESENTING THE OFFICE

EMPLOYEES OF THE RESPONDENT SUN PARLOUR. MR. TOEWS ALSO ASKED IF MR. BARDATO WAS ABLE TO DO ANYTHING TO GET RID OF THE UNION.

- (5) DURING THE AFTERNOON OF SATURDAY, MAY 8, 1971, MR. GUY DERBYSHIRE ASKED THE GRIEVORS INDIVIDUALLY IF THEY HAD JOINED THE CLAIMANT UNION WITH A VIEW TO INTERFERING WITH THEIR RIGHT TO JOIN THE TRADE UNION OF THEIR CHOICE CONTRARY TO SECTION 48 OF THE LABOUR RELATIONS ACT.
- (6) ON MONDAY MAY 10, 1971 ONE OF THE GRIEVORS, MRS. MARY COLASANTE, ARRANGED FOR A MR. FRANK DURANSKY, A SHAREHOLDER AND MEMBER OF THE RESPONDENT SUN PARLOUR Co-OPERATIVE, TO SPEAK TO THE EMPLOYEES. ON THAT OCCASION MR. DURANSKY TOLD THE GRIEVORS THAT IF THE UNION REPRESENTED THEM, TWO OF THEIR NUMBER VIZ. MARY COLASANTE AND BETTY ANN DURANSKY, WOULD NO LONGER BE ABLE TO WORK FOR THE RESPONDENT SUN PARLOUR BECAUSE OF A RULE PROHIBITING EMPLOYMENT OF MEMBERS OF FAMILIES OF GROWERS WHO WERE ALSO MEMBERS OF THE SUN PARLOUR Co-OPERATIVE. AS A RESULT OF MR. DURANSKY'S REMARKS A PETITION OBJECTING TO THE APPLICATION FOR CERTIFICATION WAS CIRCULATED AMONG THE GRIEVORS.
- (7) DURING THE AFTERNOON OF MONDAY, MAY 10, 1971, MR. VERN TOEWS AND MR. OLIVER SHARP, PRESIDENT OF THE RESPONDENT, SUN PARLOUR TOLD PETER BORDATO AND ROY CLUTE TWO OF THE GRIEVORS, THAT THERE WOULD BE NO REPERCUSSIONS AS A RESULT OF THE UNION'S APPLICATION FOR CERTIFICATION NOW THAT THE PETITION HAD BEEN SIGNED BY THE GRIEVORS. MR. SHARP ALSO STATED, "AS LONG AS I AM HERE YOU WILL ALL HAVE YOUR JOBS. WHAT HAS BEEN DONE WAS DONE IN A MOMENT OF ANGER AND THE EMPLOYEES HAVE MADE A MISTAKE". MR. SHARP CONTINUED TO SAY THAT HE WAS SORRY THAT THE MISUNDERSTANDING HAD OCCURRED DURING HIS TIME OF OFFICE AND THAT HE WAS GLAD THAT THE EMPLOYEES HAD CHANGED THEIR MIND BECAUSE IF A UNION HAD REPRESENTED THE OFFICE EMPLOYEES THE OFFICE WORK WOULD BE CONTRACTED ELSEWHERE.
- (8) ON MAY 25, 1971 THE COMPLAINANT BECAME THE CERTIFIED BARGAINING AGENT OF ALL OFFICE EMPLOYEES OF THE RESPONDENT, SUN PARLOUR. ON MAY 26, 1971 NOTICE TO BARGAIN WAS SENT TO THE RESPONDENT SUN

PARLOUR. ON JUNE 9, 1971 THE RESPONDENT SUN PARLOUR REPLIED TO THE NOTICE TO BARGAIN AND PROPOSED A MEETING. ON THE MORNING OF JUNE 14, 1971 THE ENTIRE BARGAINING UNIT WAS DISMISSED BY MR. SHARP.

- (9) ON MONDAY, JUNE 14, 1971, SUN PARLOUR BEGAN HIRING NEW STAFF TO REPLACE THE DISCHARGED GRIEVORS.
- (10) DURING THE WEEK OF JUNE 14, 1971, THE RESPONDENT SUN PARLOUR REHIRED THE FOLLOWING THREE EMPLOYEES
 - (1) MARY MARGARET COLASANTI
 - (2) BETTY ANN DURANSKY
 - (3) LINDA DRIEDGER.
- (11) ON JUNE 28, 1971 MR. SHARP, PRESIDENT OF THE RESPONDENT SUN PARLOUR ADVISED MR. STENGER, ONE OF THE GRIEVORS, THAT THE EMPLOYMENT TROUBLES CURRENTLY EXPERIENCED BY SUN PARLOUR WAS THE RESULT OF THE UNION'S APPLICATION FOR CERTIFICATION.

COPIES OF THE LETTER AND THE AMENDED COMPLAINT WERE SERVED ON THE RESPONDENTS AND SUBSEQUENTLY MR. ODETTE, FILED SEPARATE REPLIES TO THE COMPLAINT ON BEHALF OF EACH OF THE THREE RESPONDENTS.

7. THE RELEVANT PROCEDURAL PROVISIONS OF THE LABOUR RELATIONS ACT ARE FOUND IN THE BOARD'S RULES OF PROCEDURE AS FOLLOWS:

PARTICULARS

47.-(1) WHERE A PERSON INTENDS TO ALLEGE, AT THE HEARING OF AN APPLICATION OR COMPLAINT, IMPROPER OR IRREGULAR CONDUCT BY ANY PERSON, HE SHALL,

(A) INCLUDE IN THE APPLICATION OR COMPLAINT; OR

(B) FILE A NOTICE OF INTENTION THAT SHALL CONTAIN,

A CONCISE STATEMENT OF THE MATERIAL FACTS, ACTIONS AND OMISSIONS UPON WHICH HE INTENDS TO RELY AS CONSTITUTING SUCH IMPROPER OR IRREGULAR CONDUCT, INCLUDING THE TIME WHEN AND THE PLACE WHERE THE

ACTIONS OR OMISSIONS COMPLAINED OF OCCURRED AND THE NAMES OF THE PERSONS WHO ENGAGED IN OR COMMITTED THEM, BUT NOT THE EVIDENCE BY WHICH THE MATERIAL FACTS, ACTIONS OR OMISSIONS ARE TO BE PROVED, AND, WHERE HE ALLEGES THAT THE IMPROPER OR IRREGULAR CONDUCT CONSTITUTES A VIOLATION OF ANY PROVISION OF THE ACT, HE SHALL INCLUDE A REFERENCE TO THE SECTION OR SECTIONS OF THE ACT CONTAINING SUCH PROVISION.

...

(3) WHERE A STATEMENT IN AN APPLICATION OR COMPLAINT OR IN ANY DOCUMENT FILED UNDER THESE RULES IN RESPECT OF THE APPLICATION OR COMPLAINT IS SO INDEFINITE OR INCOMPLETE AS TO HAMPER ANY PERSON IN THE PREPARATION OF HIS CASE, THE BOARD MAY, UPON THE REQUEST OF THE PERSON MADE PROMPTLY UPON RECEIPT OF THE APPLICATION, COMPLAINT OR DOCUMENT, DIRECT THAT THE INFORMATION STATED BE MADE SPECIFIC OR COMPLETE AND, IF THE PERSON SO DIRECTED FAILS TO COMPLY WITH THE DIRECTION, THE BOARD MAY STRIKE THE STATEMENT FROM THE APPLICATION, COMPLAINT OR DOCUMENT.

(4) NO PERSON SHALL ADDUCE EVIDENCE AT THE HEARING OF AN APPLICATION OR COMPLAINT OF ANY MATERIAL FACT THAT HAS NOT BEEN INCLUDED IN THE APPLICATION OR COMPLAINT OR IN ANY DOCUMENT FILED UNDER THESE RULES IN RESPECT OF THE APPLICATION OR COMPLAINT, EXCEPT WITH THE CONSENT OF THE BOARD AND, IF THE BOARD DEEMS IT ADVISABLE TO GIVE SUCH CONSENT, IT MAY DO SO UPON SUCH TERMS AND CONDITIONS AS IT THINKS ADVISABLE.

8. IN THE SUBMISSIONS AND ARGUMENT OF COUNSEL THERE WERE A NUMBER OF CASES REFERRED TO BY BOTH COUNSEL WHICH CONCERNED THE PRACTICE AND PROCEDURE OF THE COURTS. THE BOARD HAS LIBERALLY BORROWED FROM THE PRACTICE AND PROCEDURE OF THE COURTS INsofar AS IT IS PRACTICABLE AND CONSISTENT WITH MATTERS OF COLLECTIVE BARGAINING AND LABOUR RELATIONS. THE OVERRIDING CONSIDERATION IN THE PRACTICES AND PROCEDURES ADOPTED BY THIS BOARD IS THE PRINCIPLE OF NATURAL JUSTICE. HOWEVER, THE MATTERS COMING BEFORE THIS BOARD DO NOT ALWAYS LEND THEMSELVES TO THE COMPLETE ADOPTION OF THE PRACTICES AND PROCEDURES OF THE SUPREME COURT OR OTHER COURTS, AND IN CONSIDERING THE PROBLEMS THAT WE ARE CONFRONTED WITH THIS BOARD HAS DEVELOPED SOME OF ITS OWN PRACTICES AND PROCEDURES AND HAS BOTH ADOPTED AND

ADAPTED OTHER PRACTICES AND PROCEDURES WHICH MAY BE FOUND IN THE COURTS. AS LORD HALDANE STATED IN LOCAL GOVERNMENT BOARD V. ARLIDGE (1915) A.C. 120 (H.L.) AT P. 132:

"...(1)T DOES NOT FOLLOW THAT THE PROCEDURE OF EVERY...TRIBUNAL MUST BE THE SAME. IN THE CASE OF A COURT OF LAW TRADITION IN THIS COUNTRY HAS PRESCRIBED CERTAIN PRINCIPLES TO WHICH IN THE MAIN THE PROCEDURE MUST CONFORM. BUT WHAT THAT PROCEDURE IS TO BE IN DETAIL MUST DEPEND UPON THE NATURE OF THE TRIBUNAL."

THUS, THERE ARE IMPORTANT DIFFERENCES IN OUR PRACTICES AND PROCEDURES FROM THOSE OF THE COURTS. FOR EXAMPLE, WE HAVE NEVER FOUND IT NECESSARY TO ADOPT THE PRE-TRIAL MECHANISMS, SUCH AS, EXAMINATIONS FOR DISCOVERY OR PRODUCTION AND INSPECTION OF DOCUMENTS. WE DO IN ALL CASES REQUIRE NOTICE OF HEARING AND ADVANCE NOTICE OF THE CASE WHICH THE PARTIES ARE REQUIRED TO MEET. IN A PROPER CASE IF THERE IS NOT SUFFICIENT NOTICE OF THE CASE THE PARTIES ARE REQUIRED TO MEET, THE BOARD WILL ORDER PARTICULARS WHEN REQUESTED AND MAY GRANT AN ADJOURNMENT IF IT IS NECESSARY. IT IS TO BE REMEMBERED THAT ONE OF THE PURPOSES OF PARTICULARS APART FROM DEFINING THE CLAIM AND PROVIDING LIMITS TO THE EVIDENCE IS TO PREVENT SURPRISE; PARTICULARS IN OUR VIEW SHOULD ONLY BE ORDERED WHERE THE PARTY REQUESTING THEM DOES NOT HAVE KNOWLEDGE OF THE MATTERS AND WHERE THE MATERIAL FACTS REQUESTED ARE NOT IN ITS POSSESSION. GENERALLY, THE PARTIES THAT COME BEFORE THIS BOARD ARE NOT STRANGERS TO EACH OTHER - THEY HAVE HAD A PRE-EXISTING RELATIONSHIP AND THEY HAVE KNOWLEDGE OF THE CASE THAT THEY ARE TO MEET.

9. IN CONSTRUING AND IMPLEMENTING ITS PRACTICES AND PROCEDURES THE BOARD HAS ALSO RECOGNIZED THAT THERE ARE MANY LAYMEN WHO APPEAR BEFORE THIS BOARD. EMPLOYEES MAY FILE COMPLAINTS AGAINST THEIR UNION OR THEIR EMPLOYER AND APPEAR IN PERSON, TRADE UNIONS ARE OFTEN REPRESENTED BY BUSINESS AGENTS AND MANY COMPANIES ARE REPRESENTED BY PERSONNEL OFFICERS OR MANAGEMENT CONSULTANTS. THE APPEARANCES OF THESE LAYMEN TO PRESENT CASES HAVE BEEN OF PRIMARY CONSIDERATION IN TAILORING ITS PROCEEDINGS. WE HAVE LONG IMPLEMENTED THE POSITION STATED BY SPENCER J. IN RE GALLOWAY LUMBER CO. LTD. AND BRITISH COLUMBIA LABOUR RELATION BOARD ET AL. 48 D.L.R. (2D) 587 (S.C.C.) AT P. 595 WHERE HE SAID:

"...I AM OF THE OPINION THAT IN THE MATTER OF LABOUR RELATIONS AND ARBITRATION THEREON TO TAKE A NARROW, TECHNICAL AND PEDANTIC VIEW OF THE PROCEDURE IS TO DEFEAT THE PURPOSE FOR WHICH THE STATUTE WAS ENACTED."

10. WHEN WE APPLY THESE CONSIDERATIONS TO THE FIRST BRANCH OF

THE RESPONDENTS' ARGUMENT THAT THE BOARD LACKS JURISDICTION BECAUSE THE COMPLAINT IS NOT SUFFICIENT, WE FIND THAT THE MOTION BY THE RESPONDENTS CANNOT SUCCEED. FIRST, THE COMPLAINT IS SUFFICIENT IN FORM. THE COMPLAINANT ADVISED THE BOARD THAT SECTION 1(4) OF THE LABOUR RELATIONS ACT WAS A CONSIDERATION IN THIS MATTER. THAT SECTION PROVIDES AS FOLLOWS:

1.-(4) WHERE, IN THE OPINION OF THE BOARD, ASSOCIATED OR RELATED ACTIVITIES OR BUSINESSES ARE CARRIED ON BY OR THROUGH MORE THAN ONE CORPORATION, INDIVIDUAL, FIRM, SYNDICATE OR ASSOCIATION, OR ANY COMBINATION THEREOF, UNDER COMMON CONTROL OR DIRECTION, THE BOARD MAY TREAT THE CORPORATIONS, INDIVIDUALS, FIRMS, SYNDICATES OR ASSOCIATIONS OR ANY COMBINATION THEREOF AS CONSTITUTING ONE EMPLOYER FOR THE PURPOSES OF THIS ACT.

INDEED, THE COMPLAINT INDICATES RELATIONSHIP BETWEEN SUN PARLOUR AND THE REMAINING RESPONDENTS AND THAT IS ALSO INDICATED IN EVIDENCE. HAD MR. ODETTE'S CLIENTS INDICATED THAT THEY WERE TAKEN BY SURPRISE OR THAT THEY WISHED FURTHER OR BETTER PARTICULARS WE MIGHT HAVE GRANTED AN ADJOURNMENT AT THE OUTSET, AND EVEN AT THIS STAGE IF THERE WAS ANY PREJUDICE WE WOULD HAVE BEEN PREPARED TO GRANT AN ADJOURNMENT. HOWEVER, THE RESPONDENTS, ARMSTRONG, A.M.C. AND MASTRONARDI, FELT THAT THE COMPLAINT WAS SUFFICIENT BOTH TO PLEAD TO, BY THE FILING OF A REPLY, AND FURTHER THAT THE COMPLAINT WAS SUFFICIENT FOR THEM TO EMBARK ON THE PROCEEDINGS AND TO PARTICIPATE IN CROSS-EXAMINATION WITHOUT OBJECTION. IT IS OBVIOUS THAT THEY ARE NOT PREJUDICED BY ANY DEFICIENCY IN THE COMPLAINT AND THEY ARE CERTAINLY NOT TAKEN BY SURPRISE. THEY AT NO TIME REQUESTED PARTICULARS AND CERTAINLY THEY CANNOT NOW COMPLAIN THAT THEY ARE UNABLE TO DEAL WITH THE COMPLAINT AS IT EXISTS. HAD THEY FELT A DEFICIENCY IN THE COMPLAINT IT WAS BETTER RAISED AT THE OUTSET OF THE PROCEEDINGS AND AT THAT STAGE WE MIGHT HAVE DISMISSED THE COMPLAINT OR PERMITTED AN AMENDMENT AND THEN AN ADJOURNMENT IF REQUESTED. ALTERNATIVELY, THE RESPONDENTS MIGHT HAVE BROUGHT A MOTION FOR PROHIBITION. SINCE THE RESPONDENTS HAVE TAKEN NOT ONLY A FRESH STEP IN THE PROCEEDINGS BY THEIR PLEADINGS, BUT HAVE GONE BEYOND THAT AND HAVE LISTENED TO THE EVIDENCE AND PARTICIPATED IN THE HEARING IT DOES NOT SEEM REASONABLE FOR THEM TO NOW COMPLAIN ABOUT THE PROCEEDINGS IN ITS PRESENT FORM. WE MIGHT ADD PARENTHETICALLY THAT THE COMPLAINT IN OUR VIEW IS NOT A NULLITY AND IF THERE IS ANY DEFICIENCY IT IS ONLY AN IRREGULARITY. PARAGRAPHS 4(B) AND 4(C) ARE SPECIFICALLY DIRECTED TO THE "RESPONDENTS" AND IN VIEW OF THE SUGGESTED RELATIONSHIP BETWEEN THE PARTIES WE ARE OF THE OPINION THAT THE COMPLAINT IS SUFFICIENT TO INDICATE THAT THE MATTERS ARE WITHIN THE PURVIEW OF THE ACT. THE LETTER SETTING FORTH THE RELATIONSHIP

WHICH WAS SERVED ON THE PARTIES MAY ALSO BE CONSIDERED AS FURTHER PARTICULARS OF THE COMPLAINT. ACCORDINGLY, AND FOR THE REASONS GIVEN THE MOTION ON THE FIRST BRANCH OF THE RESPONDENTS' ARGUMENT THAT THE BOARD LACKS JURISDICTION IS DENIED.

11. THE SECOND BRANCH OF THE RESPONDENTS' ARGUMENT CONCERNED THEIR MOTION FOR A NONSUIT. THEY HAVE INDICATED AT THIS STAGE THEY DO NOT WISH TO BE PREJUDICED BY ANY EVIDENCE THAT MIGHT BE GIVEN BY SUN PARLOUR. WE HAVE CONSIDERED CASES REFERRED TO IN THE COURTS AND WE ARE OF THE OPINION THAT THIS MOTION FOR A NONSUIT WHICH MAY BE PARTICULARLY SUITED TO THE PROCEDURES OF THE SUPREME COURT IS NOT PARTICULARLY SUITED TO THE MATTERS THAT COME BEFORE THIS BOARD.

12. IN THE COURTS, AS WE INDICATED PREVIOUSLY, THERE ARE A NUMBER OF DISPUTE DEFINING PROCEDURES WHICH ENABLE THE PARTIES TO KNOW THE CASE THAT THEY ARE TO MEET. MOST IMPORTANT, THERE ARE EXAMINATIONS FOR DISCOVERY WHICH ENABLE THE PARTIES TO OBTAIN ADMISSIONS AND TO OBTAIN INFORMATION REGARDING FACTS SO THAT THE PARTIES WILL NOT BE TAKEN BY SURPRISE. SEE E.G. GRAYDON V. GRAYDON, (1921) O.R. 301 AT 303. THERE ARE NO SUCH INTERIM PROCEDURES BEFORE THIS BOARD AND NO METHOD FOR OBTAINING ADMISSIONS OR INFORMATION ABOUT THE FACTS FROM THE OPPOSITE PARTY IN THE SAME FASHION AS IS OBTAINED IN THE COURTS. SINCE THESE PRE-TRIAL FACT FINDING PROCEDURES ARE NOT PART OF OUR PROCEDURES IT IS OUR VIEW THAT THE ACTUAL HEARING SHOULD RECEIVE PRIMACY AS THE PLACE FOR FACT GATHERING IN ORDER TO ENABLE THE BOARD TO DISPOSE OF THE ISSUE AFTER A CONSIDERATION OF ALL THE FACTS. A CAREFUL REVIEW OF THE FACTS AT THE HEARING IS NECESSARY BECAUSE OF THE ABSENCE OF BOTH PRE-HEARING AND POST-HEARING PROCEEDINGS.

13. WE ARE ALSO OF THE OPINION THAT THE PROCEDURES INVOLVED FOR A MOTION FOR A NONSUIT PARTIALLY RESULT FROM THE APPEAL PROCEDURES PROVIDED BY THE RULES OF COURT BUT WHICH ARE NOT PROVIDED UNDER THE LABOUR RELATIONS ACT. WHERE THERE IS AN APPEAL THE MOTION FOR A NON-SUIT AND THE PROCEDURE WHEREBY A DEFENDENT IS PUT TO AN ELECTION BECOMES MORE SIGNIFICANT. IF HE OPTS NOT TO ADDUCE EVIDENCE THE ISSUES MAY THEN BE DECIDED BY THE COURT OF APPEAL WHICH IS THEN IN A POSITION TO DECIDE THE ISSUE BASED ON THE TRANSCRIPT OF THE TRIAL. A PARTY WHO HAS ELECTED TO CALL NO EVIDENCE CANNOT COMPLAIN IF AT THE APPEAL STAGE THE COURT ARRIVES AT A DECISION ON FACTS PRESENTED AT THE HEARING. THE PROCEDURE FOR ELECTING TO CALL NO EVIDENCE THEREBY AVOIDS RETURNING THE MATTER TO A TRIAL COURT TO BE REHEARD OR TO HEAR FURTHER EVIDENCE AND THEREBY AVOIDS A MULTIPLICITY OF PROCEEDINGS. THAT VIEW IS REFLECTED IN M.V. "POLAR STAR" ET AL. V. LEWIS DENKER INC. ET AL. 53 D.L.R. (2D) AT P. 187 WHERE THE COURT AFTER AN EXTENSIVE REVIEW OF THE HISTORY OF NONSUIT AND A COMPARISON OF THE PRACTICE IN DIFFERENT PROVINCES DEALT WITH THE PRACTICE OF REQUIRING DEFENCE COUNSEL TO STATE THAT HE IS NOT GOING TO CALL EVIDENCE BEFORE ASKING FOR A

RULING ON A SUBMISSION OF NO CASE. REFERRING TO THE PRACTICE THE COURT SAID AT P. 185:

"...THE LEARNED LORD JUSTICE REFERS TO THE SOUNDNESS OF THE PRACTICE ADOPTED BY MOST JUDGES, WHICH PREVENTS A DEFENDENT OTHERWISE UNSUCCESSFUL ON AN APPEAL, FROM ASKING THAT THE CASE SHOULD GO BACK FOR A NEW TRIAL TO HAVE HIS EVIDENCE HEARD."

WE ARE, OF COURSE, IN A DIFFERENT POSITION BECAUSE, AS WE INDICATED, THERE IS NO APPEAL PROCEDURE UNDER THE LABOUR RELATIONS ACT, ALTHOUGH THERE IS A PROCEDURE FOR RECONSIDERATION. THIS LACK OF APPEAL PROCEDURE IS IMPORTANT IN CONSIDERING THE PROCEDURE FOR A NONSUIT.

14. SINCE WE ARE OF THE OPINION THAT THE HEARING SHOULD BE UTILIZED AS THE VEHICLE FOR OBTAINING AS MANY OF THE FACTS AS POSSIBLE IN ORDER TO ENABLE A PROPER DECISION, WE DO NOT PROPOSE TO ADOPT (AND WE THINK THE CASES ON THAT POINT ARE READILY DISTINGUISHABLE) THE PROCEDURES WHEREBY ONE OF THE RESPONDENTS MAY MOVE FOR A NONSUIT AND OBTAIN A RULING SO AS TO REMOVE IT FROM BEING TAINTED BY THE EVIDENCE OF ANOTHER RESPONDENT. THAT PRACTICE DOES NOT ALWAYS OBTAIN IN THE COURTS AND MAY DEPEND UPON THE RELATIONSHIP BETWEEN THE DEFENDENTS. SEE MAJORCSAK ET AL. V. NA-CHURS PLANT FOOD CO. (CANADA) LTD. ET AL. (1964) 2 O.R. 397. IN THAT CASE THE TRIAL JUDGE FOUND THAT ALL THE EVIDENCE IN THE CASE WAS REFERABLE AGAINST ONE OR BOTH DEFENDENTS NOTWITHSTANDING ONE OF THE DEFENDENTS HAD MOVED FOR A NONSUIT AND ELECTED TO CALL NO EVIDENCE. THE COURT'S DECISION IN THAT CASE WAS BASED ON THE RELATIONSHIP BETWEEN THE PARTIES. IN OUR VIEW THE RELATIONSHIP SUGGESTED BY THE COMPLAINT AND ALSO THE RELATIONSHIP CONTAINED IN SECTION 1(4) OF THE LABOUR RELATIONS ACT IS NO LESS THAN THE RELATIONSHIP IN THE NA-CHURS PLANT FOOD CO. (CANADA) LTD. CASE, SUPRA, AND WE SEE NO REASON WHY ALL OF THE EVIDENCE SHOULD NOT BE MADE REFERABLE TO ALL OF THE DEFENDENTS. IN ANY EVENT WE ARE SATISFIED AS TO THE SUFFICIENCY OF THE EVIDENCE AT THIS POINT TO DENY THE MOTION FOR A NONSUIT. IN ARRIVING AT A DECISION TO DENY THE MOTION FOR A NONSUIT WE HAVE NOT, OF COURSE, ARRIVED AT THE FINAL DECISION ON THE ISSUES PRESENTED.

15. ACCORDINGLY, AND FOR THE REASONS GIVEN, WE PROPOSE TO DECIDE THE ISSUES IN THIS MATTER ON ALL THE FACTS ADDUCED AT THE HEARING NO MATTER FROM WHICH PARTY AND IN THE RESULT WE DENY THE MOTION FOR A NONSUIT BY THE RESPONDENTS, ARMSTRONG, A.M.C. AND MASTRONARDI. HOWEVER, IN THE CIRCUMSTANCES AND PURSUANT TO SECTION 95(1) OF THE LABOUR RELATIONS ACT, WE RECONSIDER OUR DECISION WHICH HAS PUT THE RESPONDENTS, ARMSTRONG, A.M.C. AND MASTRONARDI TO AN ELECTION AND WE DETERMINE THAT THE RESPONDENT SUN PARLOUR SHALL ADDUCE ITS EVIDENCE, AND THAT MR.

ODETTE, ON BEHALF OF HIS CLIENTS, SHALL HAVE THE OPPORTUNITY TO PARTICIPATE IN THE PROCEEDINGS AND TO EXAMINE ON THE EVIDENCE ADDUCED BY SUN PARLOUR, AND MR. ODETTE'S CLIENTS SHALL THEN HAVE THE OPPORTUNITY TO CALL SUCH EVIDENCE AS THEY DEEM NECESSARY.

488-71-R: THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION (APPLICANT) V. THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION #793 (RESPONDENT) V. THE ONTARIO ERECTORS ASSOCIATION (INTERVENER #1) V. THE METROPOLITAN TORONTO SEWER AND WATER-MAIN CONTRACTORS ASSOCIATION (INTERVENER #2) V. ONTARIO ROAD BUILDERS ASSOCIATION (INTERVENER #3) V. THE METROPOLITAN TORONTO ROAD BUILDERS' ASSOCIATION (INTERVENER #4) V. HEAVY CONSTRUCTION ASSOCIATION OF TORONTO (INTERVENER #5).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F.W. MURRAY.

APPEARANCES AT THE HEARING: B.W. BINNING AND G.A. BECIGNEUL FOR THE APPLICANT; H.A. HERRON FOR THE RESPONDENT; ROBIN B. CUMINE AND S.G. ECCLES FOR INTERVENER #1; B.W. BINNING AND CLARENCE W. DELION FOR INTERVENER #2; B.W. BINNING FOR INTERVENER #3; B.W. BINNING AND D.E. ANDREW FOR INTERVENER #4; B.W. BINNING AND DENNIS FLYNN FOR INTERVENER #5.

DECISION OF THE BOARD: NOVEMBER 25, 1971.

1. THE BOARD DIRECTS THAT HEAVY CONSTRUCTION ASSOCIATION OF TORONTO BE ADDED AS A PARTY TO THESE PROCEEDINGS.
2. THE APPLICANT IS APPLYING TO THE BOARD FOR ACCREDITATION AS BARGAINING AGENT FOR ALL EMPLOYERS OF EMPLOYEES ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIR AND MAINTAINING OF SAME FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO IN THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR.
3. THE UNIT PROPOSED BY THE RESPONDENT IS THE SAME AS THAT PROPOSED BY THE APPLICANT EXCEPT THAT THE RESPONDENT IS ASKING FOR THE INCLUSION IN THE UNIT OF TUNNELS AND HEAVY ENGINEERING. INTERVENER #1 SUBMITS THAT THOSE EMPLOYERS FOR WHOSE EMPLOYEES THE RESPONDENT HOLDS BARGAINING RIGHTS UNDER A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE ONTARIO ERECTORS ASSOCIATION SHOULD NOT BE INCLUDED IN ANY BARGAINING UNIT FOUND TO BE APPROPRIATE BY THE BOARD.

4. THE BOARD LISTED THIS APPLICATION FOR HEARING FOR THE PURPOSE OF CONSIDERING THE REPRESENTATIONS OF THE PARTIES ON THE APPROPRIATENESS OF THE UNIT OF EMPLOYERS PROPOSED BY THE APPLICANT AND THE RESPONDENT AND IN PARTICULAR THE SECTORS OR SECTOR TO BE COVERED BY THE PROPOSED UNITS OF EMPLOYERS.

5. COUNSEL FOR THE APPLICANT AT THE HEARING PROPOSED THAT THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR FOR WHICH THE APPLICANT IS APPLYING BE DEFINED IN TERMS OF ALL CONSTRUCTION OF INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL BUILDINGS AND THE EXCAVATION FOR SUCH BUILDING. BASED ON THE REPRESENTATIONS OF ALL OF THE PARTIES TO THE PROCEEDING, WE ARE NOT PREPARED IN THE INSTANT CASE TO DEFINE THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR IN THE MANNER IN WHICH COUNSEL FOR THE APPLICANT HAS SUGGESTED. THE REQUEST OF COUNSEL FOR THE APPLICANT ACCORDINGLY IS DENIED.

6. THE REPRESENTATIVE OF THE RESPONDENT, IN EFFECT, IS ASKING THE BOARD TO DIVIDE THE TUNNELS AND WATERMAIN SECTOR AND INCLUDE THE TUNNELS PORTION OF THE SECTOR WITH THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR. ASSUMING FOR PURPOSES OF ARGUMENT THAT THE BOARD HAS THE JURISDICTION TO FRAGMENT THE TUNNELS AND WATERMAIN SECTOR AS PROPOSED BY THE RESPONDENT, BASED ON THE SUBMISSIONS OF THE REPRESENTATIVE OF THE RESPONDENT, WE ARE NOT SATISFIED THAT THERE IS ANY REASON FOR ACCEDING TO HIS REQUEST. THE RESPONDENT IS FURTHER SEEKING THE INCLUSION OF THE HEAVY ENGINEERING SECTOR IN ANY UNIT FOUND TO BE APPROPRIATE BY THE BOARD. THE SUBMISSIONS ADVANCED BY THE REPRESENTATIVE OF THE RESPONDENT IN SUPPORT OF THIS PROPOSAL ALSO FAILED TO SATISFY US THAT THE CIRCUMSTANCES IN THE INSTANT CASE ARE SUCH AS WOULD CAUSE THE BOARD TO COMBINE THE HEAVY ENGINEERING SECTOR WITH THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR. THE BOARD ACCORDINGLY FINDS THAT THE APPROPRIATE UNIT IN THE APPLICATION BEFORE US SHOULD BE CONFINED TO THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR.

7. COUNSEL FOR INTERVENER #1 SUBMITS THAT THE EMPLOYERS REPRESENTED BY THE ONTARIO ERECTORS ASSOCIATION ARE AN IDENTIFIABLE GROUP WITH A LONG HISTORY OF COLLECTIVE BARGAINING WITH THE RESPONDENT SEPARATE AND APART FROM OTHER EMPLOYERS. COUNSEL FURTHER SUBMITS THAT THE MEMBERS OF THE ASSOCIATION WORK IN ALL SECTORS THROUGHOUT THE PROVINCE. FOR THESE REASONS, COUNSEL ARGUES THAT THE MEMBERS OF THE ONTARIO ERECTORS ASSOCIATION SHOULD NOT BE INCLUDED IN ANY BARGAINING UNIT FOUND TO BE APPROPRIATE BY THE BOARD.

8. THE REPRESENTATIVE OF THE RESPONDENT ASSERTED THAT THE RESPONDENT ALSO HAS A LONG HISTORY OF COLLECTIVE BARGAINING WITH THE CRANE RENTAL ASSOCIATION AND THE TORONTO AND DISTRICT EXCAVATORS ASSOCIATION. HAVING REGARD TO THESE LONG STANDING COLLECTIVE BARGAINING RELATIONSHIPS, THE REPRESENTATIVE OF THE RESPONDENT QUESTIONED

WHETHER THE EMPLOYER MEMBERS OF THE TWO ABOVE NAMED ASSOCIATIONS SHOULD BE INCLUDED IN ANY ACCREDITATION ORDER MADE BY THE BOARD.

9. THERE IS A QUESTION AS TO WHETHER THE BOARD HAS JURISDICTION UNDER THE RELEVANT SECTIONS OF THE LABOUR RELATIONS ACT TO EXEMPT ANY EMPLOYERS OR GROUP OF EMPLOYERS FALLING WITHIN THE PURVIEW OF ANY BARGAINING UNIT FOUND TO BE APPROPRIATE FOR AN ACCREDITATION ORDER COVERING THAT UNIT. MORE PARTICULARLY THERE IS A QUESTION AS TO WHETHER THE BOARD COULD EXCLUDE EMPLOYERS WHO ARE BOUND BY COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND ANY ONE OF THE THREE ABOVE REFERRED TO ASSOCIATIONS FROM AN ACCREDITATION ORDER COVERING THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR. EVEN ASSUMING THAT THE BOARD HAS THE JURISDICTION TO MAKE SUCH EXEMPTIONS THERE IS ALSO THE QUESTION AS TO WHETHER THE BOARD IN THE EXERCISE OF ITS DISCRETION SHOULD DO SO IN LIGHT OF THE COLLECTIVE BARGAINING RELATIONSHIPS THAT ARE PURPORTED TO EXIST BETWEEN THE RESPONDENT AND THE ONTARIO ERECTORS ASSOCIATION, THE CRANE RENTAL ASSOCIATION AND THE TORONTO AND DISTRICT EXCAVATORS ASSOCIATION.

10. THE BOARD DOES NOT PROPOSE TO MAKE A DETERMINATION ON THE ABOVE QUESTIONS UNTIL ALL INTERESTED PERSONS AND PARTIES HAVE HAD AN OPPORTUNITY TO MAKE REPRESENTATIONS WITH REGARD TO THESE MATTERS. THE BOARD THEREFORE DIRECTS THE REGISTRAR TO FIX AN EMPLOYER DATE FOR THIS APPLICATION IN ACCORDANCE WITH SECTION 77 OF THE BOARD'S RULES OF PROCEDURE AND TO LIST THE MATTER FOR HEARING.

11. THE EMPLOYER DATE SHALL BE FIXED AT THE MAXIMUM PERIOD OF TEN DAYS AS PROVIDED FOR BY THE BOARD'S RULES OF PROCEDURE.

12. THE REGISTRAR SHALL SERVE ALL EMPLOYERS LISTED ON THE REVISED SCHEDULE "E" AND THE REVISED SCHEDULE "F", PREPARED BY THE BOARD, WITH NOTICE OF THE APPLICATION AND OF HEARING.

1097-71-R: PIERRE ARTS (APPLICANT) V. LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F. OF L., C.I.O., C.L.C. (RESPONDENT) V. THE CANADIAN LINEN SUPPLY (ONTARIO) LIMITED (INTERVENER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: R. J. FLINN, Q.C. FOR THE APPLICANT; TED WOHL AND JOHN ASKIN FOR THE RESPONDENT; JOHN P. SANDERSON AND WM. BALDWIN FOR THE INTERVENER.

DECISION OF THE BOARD:

NOVEMBER 30, 1971.

1. THE NAME "LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F. of L., C.I.O., C.L.C."

2. THIS IS AN APPLICATION UNDER SECTION 49(2) OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT FOR WHICH IT IS THE BARGAINING AGENT.

3. THERE ARE 88 EMPLOYEES IN THE BARGAINING UNIT. OF THESE, 53 SHOWN ON THE LISTS FILED BY THE INTERVENER SIGNED DOCUMENTS PURPORTING TO SHOW THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION. TWO OF THE DOCUMENTS ARE HEADED TO THAT EFFECT IN ENGLISH AND ONE IN ITALIAN IS SAID TO SAY THE SAME THING.

4. THE APPLICANT GAVE EVIDENCE AS TO THE ORIGATION OF THE PETITION. ARTS IS EMPLOYED ON THE ASSEMBLY LINE AND HAD WORKED FOR THE CANADIAN LINEN SUPPLY (ONTARIO) LIMITED FOR A BRIEF PERIOD OF TWO MONTHS AND A WEEK AT THE DATE OF THE HEARING. HIS EVIDENCE IS THAT ONE DAY HE ASKED SOME OF THE EMPLOYEES ABOUT THE UNION AND IF THEY WOULD SIGN A PETITION. HE TESTIFIED THAT HE PREPARED THE TEXT OF THE PETITION AFTER CONSULTATION WITH A LAWYER. HE STATED HE HAD HAD NO DISCUSSIONS WITH ANY ONE IN MANAGEMENT CONCERNING THE MATTER OF TERMINATION.

5. WHEN QUESTIONED AS TO THE PREPARATION OF THE DOCUMENT BEARING THE HEADING IN ITALIAN, ARTS SAID HE HAD TYPED IT. HE SAID THAT HE KNEW A FEW WORDS OF ITALIAN. THE WITNESS WAS THEN REQUESTED TO TRANSLATE THE HEADING INTO ENGLISH BUT WAS UNABLE TO DO SO. HE THEN TOLD THE BOARD THAT HE HAD RECEIVED HELP FROM HIS LANDLORD WHO SPOKE ITALIAN. THE HEADINGS ON THE TWO DOCUMENTS WERE VERY OBVIOUSLY TYPED ON DIFFERENT TYPEWRITERS. THE WITNESS STATED THAT THE ONE IN ENGLISH HAD BEEN TYPED ON HIS OWN MACHINE, WHILE THE ITALIAN HEADING HAD BEEN DONE ON THE LANDLORD'S.

6. ARTS OBTAINED AND WITNESSED THE SIGNATURES OF SEVEN EMPLOYEES DURING OFFICE BREAKS AND BEFORE AND AFTER WORK. HE GAVE COPIES OF THE PETITION, ONE IN ENGLISH AND ONE IN ITALIAN, TO A FELLOW EMPLOYEE, MARY MORELAND. THE LATTER GAVE THE ITALIAN VERSION TO MARY DICICCO. EACH OF THESE EMPLOYEES OBTAINED SIGNATURES AND SIGNIFIED THAT THEY HAD WITNESSED THE SIGNATURES BY SIGNING HER OWN NAME OPPOSITE THERETO ON THE SHEETS. THEY ACCOUNTED FOR THE BALANCE OF SIGNATURES MAKING UP THE TOTAL OF 53 EMPLOYEES REFERRED TO ABOVE.

7. IT IS ABUNDANTLY CLEAR FROM THE EVIDENCE THAT THE THREE PERSONS ENGAGED IN PROMOTING THE PETITION, VARIOUS FOREMEN IN THE PLANT AND SOME OF THE EMPLOYEES WERE INTERESTED IN THE MATTER BECAUSE OF A DESIRE TO SWITCH FROM THE RESPONDENT UNION TO ANOTHER WHICH REMAINED UNNAMED, IN THE HOPE OF GETTING BETTER REPRESENTATION.

8. MARY DiCICCO STATED THAT DENNIS QUICK, A FOREMAN, HAD SAID TO HER THAT HE HAD HEARD ABOUT THE PETITION AND THAT SOME OF THE GIRLS WERE AFRAID THAT THEY WOULD BE FIRED IF THEY SIGNED IT. HE ASSURED HER THAT IT WAS O.K. FOR THE GIRLS TO SIGN AND THAT IT WAS NOT TRUE THEY WOULD BE FIRED. MARY DiCICCO ALSO HAD A CONVERSATION WITH ANOTHER FOREMAN, KEN KNIGHT. SHE STATED THE LATTER HAD TOLD HER HE HAD HEARD ABOUT THE PETITION AND THOUGHT IT WAS A GOOD IDEA TO CHANGE UNIONS. HE TOLD HER THAT HE WAS GOING TO GET HIS WIFE TO SIGN THE PETITION. QUICK HAD INQUIRED OF DiCICCO AS TO WHETHER KNIGHT'S WIFE HAD SIGNED THE PETITION.

9. MARY MORELAND SAID THAT SHE HAD TOLD DENNIS QUICK ABOUT THE PETITION AND THAT SHE WAS GOING TO GIVE ONE TO MARY DiCICCO. SHE BELIEVES HE SAID "GOOD".

10. MORLAND INQUIRED OF BILL PECK, A FOREMAN IN THE PRESS ROOM, IF HE HAD SEEN THE PETITION. HE TOLD HER IT WAS GOOD BECAUSE IF THEY GOT A RAISE SO WOULD THE FOREMEN. SHE ALSO RELATED THAT, BEFORE THE PETITIONS WERE FIRST OBTAINED DENNIS QUICK TOLD HER HE HAD A MESSAGE FOR HER FROM Mr. BALDWIN, THE PLANT MANAGER. THE MESSAGE WAS THAT SHE WAS TO TELEPHONE A LAWYER WHOSE NAME WAS WRITTEN ON A PIECE OF PAPER AS "R. A. FLEET". SHE WAS TO TELL THE LAWYER WHO SHE WAS, WHAT SHE WANTED AND ASK HIM WHAT SHE WAS TO DO. THERE WAS NO TELEPHONE NUMBER ON THE PAPER. SHE DID NOT TELEPHONE THE LAWYER BUT THE FOLLOWING DAY GAVE IT TO ARTS. SHE ALSO SAID SHE HAD TALKED TO FRANK McLEOD, A MEMBER OF MANAGEMENT, ABOUT THE PETITION. SHE WAS DISTURBED, SHE SAID, BECAUSE SHE HAD HEARD THAT ARTS HAD BEEN "PLANTED" IN HIS JOB IN ORDER TO GET UP A PETITION. SHE WAS ASSURED THAT THIS WAS NOT THE CASE.

11. AN EMPLOYEE, ANNA PULITANO, SAID SHE WAS APPROACHED TO SIGN THE PETITION. SHE SAID SHE WAS AFRAID THAT SHE WOULD BE FIRED. SHE RECEIVED ASSURANCES THAT McLEOD HAD SAID NO ONE WOULD BE FIRED FOR SIGNING THE PETITION.

12. IN AN APPLICATION UNDER SECTION 49(2), THE BOARD MUST ASCERTAIN WHETHER NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE TRADE UNION [SECTION 49(3)]. THERE IS NO QUESTION HERE WITH RESPECT TO THE CORRECT PERCENTAGE OF

SIGNATURES. THERE ARE, HOWEVER, QUESTIONS AS TO WHETHER THE SIGNATURES WERE VOLUNTARILY AFFIXED TO THE PETITION. IN AN EFFORT TO DETERMINE THIS QUESTION, THE BOARD HAS REVIEWED THE CIRCUMSTANCES SURROUNDING THE ORIGINATION OF THE DOCUMENTS INVOLVED AND THE MANNER IN WHICH THE SIGNATURES THERETO WERE OBTAINED.

13. WE ARE NOT SATISFIED WITH THE EVIDENCE OF ARTS REGARDING THE ORIGINATION OF THE PETITION. IN PARTICULAR, HIS EXPLANATION AS TO HOW THE ITALIAN HEADING WAS PREPARED AND TYPED WAS EVASIVE, HESITANT AND UNCONVINCING. THE EVIDENCE INDICATES THAT THE PETITION WAS CIRCULATED WITH THE HELP AND OPON ENCOURAGEMENT OF PERSONS IN MANAGEMENT. THIS WENT BEYOND ASSURING THE EMPLOYEES THAT THEY WOULD NOT BE FIRED FOR SIGNING THE PETITION.

14. THE INVOLVEMENT OF A NUMBER OF THE FOREMEN THROUGHOUT THE CIRCULATION OF THE PETITION TO THE EXTENT DESCRIBED ABOVE, CANNOT HAVE ESCAPED THE KNOWLEDGE OF THE EMPLOYEES WHO WERE ASKED TO SIGN THE PETITION. SUCH KNOWLEDGE WOULD, IN OUR OPINION, PREVENT THE EXERCISE OF FREE CHOICE ON THE PART OF EMPLOYEES WHEN THEY WERE CONFRONTED WITH A REQUEST TO SIGN THE DOCUMENTS.

15. IN THE CIRCUMSTANCES OF THIS CASE AND HAVING IN MIND THE TOTOALITY OF THE EVIDENCE, THE BOARD FINDS THAT IT IS NOT SATISFIED THAT THE PETITIONS WERE VOLUNTARILY SIGNED BY THE EMPLOYEES OF THE RESPONDENT.

16. THE APPLICATION IS ACCORDINGLY DISMISSED.

1013-71-M: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1669 (TRADE UNION) V. G. A. BAERT CONSTRUCTION (1964) LTD. (EMPLOYER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND A. MAIN.

APPEARANCES AT THE HEARING: J. E. ROVET AND W. SHERMAN FOR THE TRADE UNION; R. A. BLAIR AND E. A. KURBIS FOR THE EMPLOYER.

DECISION OF THE BOARD: NOVEMBER 22, 1971.

1. THIS IS A REFERENCE FROM THE MINISTER MADE UNDER SECTION 96 OF THE ACT.

2. A REQUEST WAS MADE TO THE MINISTER BY THE TRADE UNION FOR THE APPOINTMENT OF A NOMINEE FOR THE EMPLOYER TO A BOARD OF ARBITRATION PURSUANT TO SECTION 37(4) OF THE ACT. THE EMPLOYER OBJECTED TO

THE MINISTER MAKING SUCH AN APPOINTMENT ON THE GROUNDS THAT THERE WAS NO COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE EMPLOYER AND THE TRADE UNION. THE MINISTER ACCORDINGLY HAS REFERRED TO THE BOARD THE QUESTION AS TO WHETHER, IN FACT, THERE IS AN EXISTING COLLECTIVE AGREEMENT BETWEEN THE EMPLOYER AND THE TRADE UNION.

3. THE HEARING ON THE REFERENCE TOOK PLACE ON OCTOBER 27, 1971. THERE WAS FILED WITH THE BOARD AN AGREEMENT DATED SEPTEMBER 1, 1970 NAMING THE TRADE UNION AND THE EMPLOYER AS PARTIES. THE SAID AGREEMENT INCORPORATES BY REFERENCE A COLLECTIVE AGREEMENT BETWEEN THE TRADE UNION AND THE CONSTRUCTION ASSOCIATION OF THUNDER BAY INCORPORATED. THE AGREEMENT DATED SEPTEMBER 1, 1970 BEARS THE SIGNATURE OF ONE NORMAN MILLER ON BEHALF OF THE EMPLOYER AND THE SIGNATURE OF WILLIAM SHERMAN ON BEHALF OF THE TRADE UNION.

4. THE POSITION TAKEN BY THE EMPLOYER WAS THAT NORMAN MILLER DID NOT HAVE EITHER THE REAL OR OSTENSIBLE AUTHORITY TO SIGN THE SAID AGREEMENT ON BEHALF OF THE EMPLOYER AND THAT ACCORDINGLY THE EMPLOYER WAS NOT BOUND BY THE AGREEMENT. THE POSITION OF THE TRADE UNION WAS THAT THE EMPLOYER HELD OUT NORMAN MILLER AS HAVING AUTHORITY TO SIGN THE AGREEMENT OF SEPTEMBER 1, 1970 ON BEHALF OF THE EMPLOYER AND THAT ACCORDINGLY THE EMPLOYER WAS A PARTY TO AND BOUND BY THE AGREEMENT.

5. AT THE BOARD HEARING ON OCTOBER 27, 1971, COUNSEL FOR THE TRADE UNION CALLED WILLIAM SHERMAN AS A WITNESS. SHERMAN TESTIFIED AS TO THE CIRCUMSTANCES SURROUNDING THE EXECUTION OF THE SEPTEMBER 1, 1970 AGREEMENT BY HIMSELF AND MILLER. COUNSEL FOR THE EMPLOYER THEN CALLED TWO SENIOR OFFICERS OF THE EMPLOYER WHO GAVE EVIDENCE AS TO THEIR KNOWLEDGE CONCERNING THE SAID AGREEMENT. COUNSEL FOR THE EMPLOYER ALSO CALLED AS A WITNESS NORMAN MILLER, THE PERSON WHOSE SIGNATURE APPEARS ON THE AGREEMENT OF SEPTEMBER 1, 1970 ON BEHALF OF THE EMPLOYER. MILLER TESTIFIED AS TO THE CIRCUMSTANCES AND EVENTS SURROUNDING HIS EXECUTION OF THE DOCUMENT. AFTER COUNSEL FOR BOTH PARTIES HAD CALLED THEIR EVIDENCE RELATING TO THE QUESTION REFERRED TO THE BOARD, NAMELY WHETHER THERE WAS A COLLECTIVE AGREEMENT BETWEEN THE EMPLOYER AND THE TRADE UNION, THE BOARD CALLED ON COUNSEL TO MAKE THEIR REPRESENTATIONS ON THIS ISSUE BASED ON THE EVIDENCE ADDUCED AT THE HEARING. HAVING ENTERTAINED THE REPRESENTATIONS OF COUNSEL, THE BOARD RESERVED ITS DECISION AND ADJOURNED THE CASE.

6. BY LETTER DATED OCTOBER 29, 1971, COUNSEL FOR THE EMPLOYER ADVISED THE BOARD THAT CERTAIN EVIDENCE GIVEN BY MR. SHERMAN RELEVANT TO THE ISSUE BEFORE THE BOARD HAD CAUGHT HIM AND THE REPRESENTATIVES OF THE EMPLOYER IN ATTENDANCE AT THE HEARING BY SURPRISE. COUNSEL FOR THE EMPLOYER IN HIS LETTER REQUESTED THAT THE BOARD POSTPONE MAKING ANY DETERMINATION ON THE REFERENCE AND REOPEN THE HEARING FOR THE PURPOSE OF ALLOWING HIM TO CALL TWO OTHER OFFICIALS OF THE EMPLOYER, WHO

WERE NOT IN ATTENDANCE AT THE HEARING, TO GIVE TESTIMONY IN REPLY TO THAT OF MR. SHERMAN'S WHICH HAD CAUGHT COUNSEL BY SURPRISE. COUNSEL FOR THE TRADE UNION BY LETTER HAS EXPRESSED HIS OPPOSITION TO THE BOARD ACCEDING TO THE REQUEST OF COUNSEL FOR THE EMPLOYER.

7. MR. SHERMAN, WHO WAS THE ONLY WITNESS CALLED BY THE TRADE UNION, WAS THE FIRST PERSON TO TESTIFY AT THE BOARD HEARING ON THE REFERENCE ON OCTOBER 27, 1971. AS HAS BEEN STATED, COUNSEL FOR THE EMPLOYER THEN CALLED THREE WITNESSES TO TESTIFY IN SUPPORT OF THE POSITION TAKEN BY THE EMPLOYER INCLUDING NORMAN MILLER. COUNSEL FOR BOTH PARTIES HAVING INDICATED THAT THEY HAD NO FURTHER EVIDENCE WHICH THEY WISHED TO ADDUCE, THE BOARD CALLED UPON THEM TO MAKE THEIR REPRESENTATIONS BASED ON THE EVIDENCE BEFORE THE BOARD. AT NO TIME EITHER AFTER SHERMAN HAD TESTIFIED OR AFTER THE WITNESSES FOR THE EMPLOYER HAD TESTIFIED, OR AFTER THE COMPLETION OF ARGUMENT DID COUNSEL FOR THE EMPLOYER ADVISE THE BOARD THAT HE OR HIS CLIENT WAS TAKEN BY SURPRISE BY ANY OF THE EVIDENCE ADDUCED BY THE TRADE UNION OR THAT HE WANTED AN ADJOURNMENT FOR THE PURPOSE OF CALLING FURTHER EVIDENCE.

8. COUNSEL FOR THE EMPLOYER HAD AMPLE OPPORTUNITY AT THE HEARING ON OCTOBER 27, 1971 TO ASSESS HIS POSITION AND REQUEST AN ADJOURNMENT OF THE CASE TO ALLOW HIM TO CALL FURTHER EVIDENCE. THIS HE FAILED TO DO. FOR THIS REASON AND IN ALL OF THE CIRCUMSTANCES AS SET OUT ABOVE, THE BOARD SEES NO REASON WHY IT SHOULD AT THIS TIME REOPEN THE CASE TO PERMIT THE EMPLOYER TO CALL FURTHER EVIDENCE. THE REQUEST OF COUNSEL FOR THE EMPLOYER ACCORDINGLY IS DENIED.

1152-71-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) v. ACRITEX YARNS LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: K. GILBERT FOR THE APPLICANT; R. C. FILION, W. HALE AND G. DABLE FOR THE RESPONDENT; JOHN A. MCTAVISH AND DANIEL J. GALLERY FOR THE OBJECTORS.

DECISION OF THE BOARD: NOVEMBER 25, 1971.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THERE WERE FILED TWO STATEMENTS OF OBJECTION OR PETITION IN OPPOSITION TO THE APPLICATION. EACH DOCUMENT BEARS ONE SIGNATURE. THE BOARD INQUIRED INTO THE ORIGINATION OF THESE PETITIONS AND THE MANNER IN WHICH THE SIGNATURES THERETO WERE OBTAINED. THE SIGNATORIES, MCTAVISH AND GALLERY TESTIFIED IN SUPPORT OF THE PETITIONS.

2. IT IS QUITE CLEAR FROM THE EVIDENCE THAT SUBSEQUENT TO THE POSTING OF THE NOTICE OF THE UNION'S APPLICATION FOR CERTIFICATION, THE TWO EMPLOYEES, WHO LATER SIGNED THE PETITIONS, WERE INTERVIEWED BY THE PRESIDENT AND GENERAL MANAGER OF THE COMPANY. THE PETITIONERS WHO TESTIFIED WITH RESPECT TO THEIR RESPECTIVE STATEMENTS OF DESIRE STATED THAT THE ABOVE DESCRIBED OFFICER OF THE COMPANY EXPLAINED TO THEM THAT IT WOULD NOT BE BENEFICIAL TO THE COMPANY TO HAVE THE UNION IN THE PLANT, BECAUSE OF THE COMPANY'S FINANCIAL SITUATION. THE PRESIDENT AND GENERAL MANAGER INQUIRED OF THESE EMPLOYEES AS TO WHY THEY WANTED TO JOIN THE UNION. THEY EXPLAINED TO HIM THAT THEY FELT THEY WERE NOT GETTING A FAIR SHAKE WITH RESPECT TO SATURDAY AND SUNDAY WORK. AS THE RESULT OF THIS PART OF THE CONVERSATION, THIS OFFICER OF THE COMPANY OFFERED THEM MORE MONEY FOR SATURDAY AND SUNDAY WORK. THE AGREEMENT, TO USE THE WORD EMPLOYED BY THE WITNESS MCTAVISH, WAS THAT THEY WOULD BE PAID TIME AND ONE HALF FOR WORK DONE ON THE ABOVE DAYS.

3. THE CHANGE IN WAGES AGREED TO BETWEEN THE COMPANY AND THE GRIEVORS WOULD APPEAR TO BE CONTRARY TO THE PROVISIONS OF SECTION 70(2) OF THE LABOUR RELATIONS ACT. SECTION 70(2) PROVIDES:

"WHERE A TRADE UNION HAS APPLIED FOR CERTIFICATION AND NOTICE THEREOF FROM THE BOARD HAS BEEN RECEIVED BY THE EMPLOYER, NO EMPLOYER SHALL, EXCEPT WITH THE CONSENT OF THE TRADE UNION, ALTER THE RIGHTS, PRIVILEGES OR DUTY OF THE EMPLOYER OR THE EMPLOYEES UNTIL.

(A) THE TRADE UNION HAS GIVEN NOTICE UNDER SECTION 13, IN WHICH CASE SUBSECTION 1 APPLIES; OR

(B) THE APPLICATION FOR CERTIFICATION BY THE TRADE UNION IS DISMISSED OR TERMINATED BY THE BOARD, OR WITHDRAWN BY THE TRADE UNION."

4. HAVING REGARD TO ALL OF THE FOREGOING FACTS CONCERNING THE ORIGINATION AND CIRCULATION OF THE PETITIONS, THE BOARD FINDS THAT THEY DO NOT CAST DOUBT UPON THE EVIDENCE OF MEMBERSHIP SO AS TO REQUIRE THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

5. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

6. THE BOARD FURTHER FINDS THAT ALL STATIONARY ENGINEERS AND

PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT AT ITS PLANT IN PERTH, SAVE AND EXCEPT CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON NOVEMBER 2, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

1106-71-R: HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION, LOCAL 261, OTTAWA, ONTARIO - AFFILIATED WITH AFL-CIO AND C.L.C. (APPLICANT) V. OTTAWA CIVIL SERVICE RECREATIONAL ASSOCIATION (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: J. GRAHAM AND FRANK GRELLA FOR THE APPLICANT; LEONARD C. HILL, J. W. HARBER, J. C. HANSON AND R. J. LATUCIPPE FOR THE RESPONDENT.

DECISION OF THE BOARD: NOVEMBER 24, 1971.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE RESPONDENT CHALLENGED THE JURISDICTION OF THE BOARD. THE RESPONDENT ARGUES THAT THE ACTIVITIES OF THE RESPONDENT COMPRISE A WORK OR UNDERTAKING FALLING ENTIRELY WITHIN THE PROVISIONS OF SECTION 91 OF THE BRITISH NORTH AMERICA ACT AND ARE THUS OUTSIDE THE JURISDICTIONAL REACH OF THE LABOUR RELATIONS ACT R.S.O. 1970 CHAPTER 232.

2. THE ARGUMENT IS BASED UPON THE FOLLOWING SUBMISSIONS. THE RESPONDENT IS AN INCORPORATED NON-PROFIT CORPORATION CHARTERED BY THE GOVERNMENT OF CANADA. ITS MEMBERSHIP IS RESTRICTED TO FEDERAL OR DOMINION PUBLIC SERVANTS AS DEFINED BY THE DOMINION PUBLIC SERVICE ACT OR BY THE NATIONAL DEFENCE ACT AND OTHER STATUTES RELATING TO FEDERAL AND DOMINION PUBLIC SERVANTS. THE BUILDINGS USED BY THE ASSOCIATION STAND ON LANDS OWNED BY THE GOVERNMENT OF CANADA AND LEASED ON A 99 YEAR LEASE FROM THE NATIONAL CAPITAL COMMISSION. THE BUILDING ITSELF WAS SUBSIDIZED BY THE GOVERNMENT OF CANADA. THE MEM-

BERSHIP IN THE RESPONDENT IS RESTRICTED TO EMPLOYEES OF THE GOVERNMENT OF CANADA AND SPECIFICALLY EXCLUDES PERSONS IN THE PRIVATE SECTOR, CIVIL SERVANTS OF THE PROVINCE OF ONTARIO AND MUNICIPAL SERVANTS. THE ASSOCIATION IS SUSTAINED BY PROFITS FROM ITS OPERATIONS AND MEMBERSHIP FEES. A GOOD PORTION OF THE MEMBERSHIP FEES IN THE RESPONDENT ARE RECEIVED BY CHECK-OFF UNDER THE FINANCIAL ADMINISTRATION ACT. MEMBERSHIP ENCOMPASSES PERSONS RESIDENT IN THE NATIONAL CAPITAL REGION WHICH INCLUDES A LARGE SECTION IN THE PROVINCE OF QUEBEC. A LARGE PORTION OF THE MEMBERSHIP AND OF THE EMPLOYEES ARE MEMBERS OF THE CANADIAN ARMED FORCES. IT IS SUGGESTED THAT THE OATH OF ALLEGIANCE TAKEN BY THE LATTER IS INCONSISTENT WITH UNION MEMBERSHIP.

3. HAVING REGARD TO ALL OF THE EVIDENCE, THE BOARD FINDS THAT THE MATTER FALLS WITHIN THE JURISDICTION OF THE PROVINCE OF ONTARIO AND THAT, CONSEQUENTLY, THIS BOARD IS ENTITLED TO DEAL WITH THE APPLICATION.

4. MR. A. A. MORROW, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE:

- (A) COMPOSITION OF THE BARGAINING UNIT;
- (B) DUTIES AND RESPONSIBILITIES OF STEWARDS.

1080-71-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (COMPLAINANT) v. SWINGLINE OF CANADA LIMITED (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS P.J. O'KEEFFE AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: A.M. MINSKY, JEFF SLOPEN AND BRIAN YANDELL FOR THE COMPLAINANT; SINCLAIR KOSSOFF AND GEORGE ROBINSON FOR THE RESPONDENT.

DECISION OF THE BOARD: NOVEMBER 25, 1971.

1. THIS IS A COMPLAINT PURSUANT TO SECTION 79 (FORMERLY SECTION 65) OF THE LABOUR RELATIONS ACT ALLEDGING THAT THE AGGRIEVED EMPLOYEE WAS DEALT WITH BY THE COMPANY CONTRARY TO THE PROVISIONS OF SECTIONS 66, 68(A) AND (C) AND 74 (FORMERLY SECTIONS 56, 58(A) AND (C) AND 61) OF THE ACT.

2. THE COMPANY CLAIMED THAT THE AGGRIEVED EMPLOYEE WAS DISCHARGED FOR UNACCEPTABLE WORK PERFORMANCE WHICH CULMINATED IN AN ACT OF INSUBORDINATION CONCERNING HIS FOREMAN. THE EVIDENCE INDICATED THAT THE AGGRIEVED EMPLOYEE HAD ENGAGED IN OVERT UNION

ACTIVITY WITH THE KNOWLEDGE OF THE EMPLOYER FOR SOME TIME. FURTHER EVIDENCE INDICATED THAT OTHER UNION ADHERENTS ARE STILL EMPLOYED BY THE COMPANY.

3. THE AGGRIEVED EMPLOYEE BECAUSE HE WAS A UNION ADHERENT IS NOT ENTITLED TO IMMUNITY FROM DISMISSAL. NOTWITHSTANDING THAT HE IS INVOLVED WITH THE UNION THE COMPANY IS STILL ENTITLED TO EXPECT A SATISFACTORY WORK PERFORMANCE FROM HIM. HAVING REGARD TO THE EVIDENCE WE ARE SATISFIED THAT THE COMPANY'S EXPLANATION IS CREDIBLE AND ACCORDINGLY THE COMPLAINANT HAS NOT SUSTAINED THE BURDEN OF PROOF BY SHOWING THAT THE AGGRIEVED EMPLOYEE WAS DISMISSED FOR UNION ACTIVITY.

4. THE COMPLAINT IS THEREFORE DISMISSED.

CASE LISTINGS NOVEMBER 1971

	PAGE
1. CERTIFICATION	
(A) BARGAINING AGENTS CERTIFIED	252
(B) APPLICATIONS DISMISSED	264
(C) APPLICATIONS WITHDRAWN	267
2. APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS	269
3. APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL	270
4. APPLICATION FOR DECLARATION THAT LOCK-OUT UNLAWFUL	270
5. APPLICATIONS FOR CONSENT TO PROSECUTE	270
6. COMPLAINTS UNDER SECTION 79 (FORMERLY S. 65) (UNFAIR LABOUR PRACTICE)	272
7. APPLICATION UNDER SECTION 35(A)	273
8. APPLICATIONS UNDER SECTION 55 (FORMERLY S. 47A)	273
9. APPLICATION UNDER SECTION 76 (FORMERLY S. 63) (FINANCIAL STATEMENT REQUESTED BY TRADE UNION MEMBER)	274
10. JURISDICTIONAL DISPUTES	274
11. REFERENCE TO BOARD PURSUANT TO SECTION 96 (FORMERLY S.79A)	275
12. APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION	275

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING NOVEMBER 1971

BARGAINING AGENTS CERTIFIED DURING NOVEMBER

NO VOTE CONDUCTED

415-71-R: HOTEL AND RESTAURANT EMPLOYEES UNION, LOCAL 743, WINDSOR, ONTARIO, AFFILIATED WITH HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION: AFL-CIO (APPLICANT) V. SHERATON VISCOUNT MOTOR HOTEL IN THE CITY OF WINDSOR, IN THE COUNTY OF ESSEX, PRESENTLY OPERATED IN THE NAME OF DORNA REALTY ASSOCIATES LIMITED, BY THE RECEIVER AND MANAGER, MACPHERSON HUBBELL APPOINTED PURSUANT TO THE ORDER OF THE SUPREME COURT OF ONTARIO (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS SHERATON VISCOUNT MOTOR HOTEL AT WINDSOR, SAVE AND EXCEPT ASSISTANT MANAGER, CATERING MANAGER, BAR MANAGER, CHEF, MAITRE D', HOUSEKEEPER, HOSTESS AND PERSONS ABOVE THOSE RANKS, OFFICE STAFF, DESK CLERKS, SECURITY GUARDS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (118 EMPLOYEES IN THE UNIT). (HAVING REGARD FOR THE AGREEMENT OF THE PARTIES). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PERSONS CLASSIFIED AS ASSISTANT HOUSEKEEPER, MAINTENANCE SUPERVISOR AND COFFEE SHOP HOSTESS EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT).

(SEE DECISION [1971] OLRB REP. 693).

452-71-R: THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION (APPLICANT) V. THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION NUMBER 721 (RESPONDENT) V. THE ONTARIO ERECTORS ASSOCIATION (INTERVENER #1) V. HEAVY CONSTRUCTION ASSOCIATION OF TORONTO (INTERVENER #2).

UNIT: "ALL EMPLOYERS OF EMPLOYEES WHO ARE RODMEN FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO AND THE PRESENT LIMITS OF THE FORD MOTOR COMPANY, OAKVILLE PLANT AND THE COUNTY OF HALTON IN THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR, AND THE HEAVY ENGINEERING SECTOR." (NO EMPLOYEES IN THE UNIT).

(SEE DECISION [1971] OLRB REP. 719).

591-71-R: CANADIAN FOOD AND ALLIED WORKERS, LOCAL UNION 175, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA AFL-CIO-CLC (APPLICANT) V. M. LOEB LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT CARRYING ON BUSINESS UNDER THE NAME OF K-MART FOODS AT ITS RETAIL STORES IN KINGSTON TOWNSHIP, SAVE AND EXCEPT THE ASSISTANT STORE MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT STORE MANAGER, THE MEAT DEPARTMENT, HEAD CASHIER, BAKERY MANAGER, PRODUCE MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (22 EMPLOYEES IN THE UNIT).

813-71-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. LUCATO BROS. AND COMPANY, LTD. (RESPONDENT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (INTERVENER).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

824-71-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. M. LOEB LIMITED (RESPONDENT).

UNIT: "ALL MEAT DEPARTMENT EMPLOYEES OF THE RESPONDENT CARRYING ON BUSINESS UNDER THE NAME OF K-MART FOODS AT ITS RETAIL STORES IN VESPRE TOWNSHIP, SAVE AND EXCEPT MEAT MANAGER, PERSONS ABOVE THE RANK OF MEAT MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (3 EMPLOYEES IN THE UNIT).

870-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. CATMCART INSPECTION SERVICES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT AND OUT OF OAKVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (4 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

879-71-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION (APPLICANT) V. MILL FARM PRODUCE LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (10 EMPLOYEES IN THE UNIT).

911-71-R: INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES LOCAL UNION 1904 SUDBURY (APPLICANT) V. CANADIAN PITTSBURGH INDUSTRIES LIMITED (RESPONDENT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF NORTH BAY, SAVE AND EXCEPT SUPERINTENDENT, PERSONS ABOVE THE RANK OF SUPERINTENDENT, AND OFFICE AND SALES STAFF." (3 EMPLOYEES IN THE UNIT).

963-71-R: HOTEL & RESTAURANT EMPLOYEE'S BARTENDERS' INTERNATIONAL UNION, LOCAL 280, A.F.L. C.I.O. C.L.C. (APPLICANT) V. VERED & HARVEY COMPANY LIMITED KNOWN AS ALMONT HOTEL (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL TAPMEN, BARTENDERS' BEVERAGE WAITERS, BAR-BOYS, IMPROVERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT MANAGER PERSONS ABOVE THE RANK OF MANAGER." (9 EMPLOYEES IN THE UNIT).

(SEE DECISION [1971] OLRB REP. 736).

974-71-R: FUR, LEATHER, SHOE & ALLIED WORKERS' UNION, LOCAL 82, AFFILIATED WITH THE AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (APPLICANT) V. FRANCINE FOOTWEAR LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (90 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE FOLLOWING PERSONS ARE NOT INCLUDED IN THE BARGAINING UNIT: FACTORY MAINTENANCE SUPERVISOR; SHIPPING AND RECEIVING SUPERVISOR; CHIEF MECHANIC).

987-71-R: READY-MIX, BUILDING SUPPLY, HYDRO & CONSTRUCTION DRIVERS, WAREHOUSEMEN & HELPERS, TEAMSTERS LOCAL UNION NO. 230, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. HALL FUEL (1965) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING IN AND OUT OF THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON, SAVE AND EXCEPT FOREMEN, INSPECTORS, DISPATCHERS, PERSONS ABOVE THE RANKS OF FOREMAN, INSPECTOR AND DISPATCHER, OFFICE STAFF, SALESMEN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (31 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1029-71-R: THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (APPLICANT) V. AREA MUNICIPALITY OF THE TOWN OF GRAVENHURST (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE DEPARTMENT OF PUBLIC WORKS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (22 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PERSONS CLASSIFIED AS BUILDING INSPECTOR, ANIMAL CONTROL OFFICER AND BY-LAW ENFORCEMENT OFFICER ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT).

1034-71-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. CANADA SAFEWAY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN HALTON COUNTY REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (15 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1039-71-R: SERVICE EMPLOYEES UNION, LOCAL 204 AFFILIATED WITH THE S.E.I.U., A.F. OF L. C.I.O., C.L.C. (APPLICANT) V. GUILDWOOD VILLA NURSING HOME (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN SCARBOROUGH, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (54 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1041-71-R: CANADIAN TRANSPORTATION WORKERS UNION #199 (APPLICANT) V. LAIDLAW TRANSPORT LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ABERFOYLE, SAVE AND EXCEPT OFFICE MANAGER, PERSONS ABOVE THE RANK OF OFFICE MANAGER AND OFFICE STAFF." (5 EMPLOYEES IN THE UNIT).

1045-71-R: WAREHOUSEMEN & MISCELLANEOUS DRIVERS LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. ANTHES EQUIPMENT LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, AND HAVING REGARD TO THE AGREEMENT OF THE PARTIES, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DISPATCHER, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (18 EMPLOYEES IN THE UNIT).

1093-71-R: CANADIAN TRANSPORTATION WORKERS UNION #200 (APPLICANT)
V. CATHCART TRUCK LINES (TORONTO) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DISPATCHERS, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (18 EMPLOYEES IN THE UNIT).

1095-71-R: CANADIAN TRANSPORTATION WORKERS UNION #199 (APPLICANT)
V. CATHCART TRUCK LINES (TORONTO) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DISPATCHERS, OFFICE AND SALES STAFF." (3 EMPLOYEES IN THE UNIT).

1096-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796
(APPLICANT) V. SUDBURY HOSPITAL SERVICES (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT THE CHIEF ENGINEER." (5 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1098-71-R: INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES,
LOCAL 1904 (APPLICANT) V. DOMINION BRIDGE COMPANY LIMITED ONTARIO
BRANCH (RESPONDENT).

UNIT: "ALL PAINTERS AND PAINTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A FIFTY MILE RADIUS OF THE TIMMINS FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

1127-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE COUNTY OF PEEL (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS HOME FOR THE AGED AT BRAMPTON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (3 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1128-71-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. MOLLENHAUER LIMITED (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

1136-71-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. CREATORS (CANADA) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (6 EMPLOYEES IN THE UNIT).

1139-71-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. HANK BROUWER CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY MILE RADIUS OF THE NORTH BAY POST OFFICE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

1140-71-R: WINDSOR PRINTING PRESSMEN AND ASSISTANTS' UNION LOCAL No. 274 (APPLICANT) V. DEVON GRAPHICS (RESPONDENT) V. EMPLOYEE (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT GENERAL SUPERINTENDENT, PERSONS ABOVE THE RANK OF GENERAL SUPERINTENDENT AND EMPLOYEES ENGAGED IN PRODUCTION OF LITHOGRAPHY BY LITHOGRAPHIC, PLANAGRAPHIC, PHOTOLITHOGRAPHIC OR GELATINE PROCESSES PRESENTLY REPRESENTED BY LOCAL 247, LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION." (5 EMPLOYEES IN THE UNIT).

1143-71-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. BELL AEROSPACE CANADA DIVISION OF TEXTRON CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN STEPHEN TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, ENGINEERS AND DRAFTSMEN." (31 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1152-71-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. ACRITEX YARNS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT AT ITS PLANT IN PERTH, SAVE AND EXCEPT CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER. (3 EMPLOYEES IN THE UNIT).

(SEE DECISION [1971] OLRB REP. 762).

1153-71-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. EMBASSY MOTOR HOTEL LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS BEVERAGE ROOMS AND COCKTAIL LOUNGES IN SUDBURY, SAVE AND EXCEPT BEVERAGE ROOM AND LOUNGE MANAGERS AND PERSONS ABOVE THE RANK OF BEVERAGE ROOM AND LOUNGE MANAGER." (2 EMPLOYEES IN THE UNIT).

1157-71-R: OPERATIVE PLASTERERS & CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES & CANADA, LOCAL 124, OTTAWA - HULL (APPLICANT) V. CANADIAN JOHNS-MANVILLE CO., LIMITED (RESPONDENT).

UNIT: "ALL PLASTERERS AND PLASTERERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

1158-71-R: BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA, LOCAL UNION NO. 7 (APPLICANT) V. BALDOCK ENGINEERING & CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT).

1160-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. FORMAC PUMPING SERVICES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT AND OUT OF PETROLIA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (7 EMPLOYEES IN THE UNIT).

1162-71-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. GENERAL BAKERIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS WONDER BREAD DIVISION AT ITS BRACEBRIDGE DEPOT, SAVE AND EXCEPT ROUTE SUPERVISORS, PERSONS ABOVE THE RANK OF ROUTE SUPERVISOR, AND OFFICE STAFF." (3 EMPLOYEES IN THE UNIT).

1171-71-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. SKLAR FURNITURE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS MERIDIAN FURNITURE DIVISION AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (51 EMPLOYEES IN THE UNIT).

1173-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE BOROUGH OF NORTH YORK (RESPONDENT).

UNIT: "ALL SCHOOL HEALTH ASSISTANTS IN THE EMPLOY OF THE RESPONDENT, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS." (46 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT SCHOOL DENTAL ASSISTANTS ARE NOT INCLUDED IN THE BARGAINING UNIT).

1181-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. SHERATON CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

1184-71-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA A.F.L. - C.I.O. - C.L.C. (APPLICANT) V. WM. PUDDY BEEF LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD. (13 EMPLOYEES IN THE UNIT).

1198-71-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS LOCAL UNION 721 (APPLICANT) V. RAM STRUCTURAL STEEL LIMITED (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL,

THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

1209-71-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. PRESIDENT BUILDINGS LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY MILE RADIUS OF THE NORTH BAY POST OFFICE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

1218-71-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 759 (APPLICANT) V. POOLE CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

1219-71-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. H. TEEUWSEN CONSTRUCTION (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY MILE RADIUS OF THE NORTH BAY POST OFFICE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

1220-71-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 759 (APPLICANT) V. NEWPORT METAL INDUSTRIES CO. LIMITED (RESPONDENT) V. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 1669 (INTERVENER).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

1221-71-R: CHRISTIAN TRADE UNIONS OF CANADA (LOCAL 6) (APPLICANT) V. THURLOW AND SANDERSON LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FORE-

MEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

1234-71-R: CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 175, CHARTERED BY AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. M. LOEB (LONDON) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN THE RETAIL STORES OF ITS K-MART FOODS DIVISION IN VESPRE TOWNSHIP REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (31 EMPLOYEES IN THE UNIT).

(SEE DECISION [1971] OLRB REP. 742).

1249-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 93 (APPLICANT) V. BYERS-BUSH LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

1268-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL #247 (APPLICANT) V. JOHN WHEELWRIGHT LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

1272-71-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 759 (APPLICANT) V. ELLIS-DON LIMITED (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

APPLICATION CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

1088-71-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. BUTLER METAL PRODUCTS CO. LTD. (RESPONDENT) V. THE INDUSTRIAL COUNCIL OF BUTLER METALS (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PRESTON, SAVE AND EXCEPT ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE UNIVERSITY OR SCHOOL VACATION PERIOD." (187 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	180
NUMBER OF PERSONS WHO CAST BALLOTS	171
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	122
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	49

APPLICATIONS CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

309-71-R: LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 749 (APPLICANT) V. CAPRI CONSTRUCTION COMPANY (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	7
NUMBER OF PERSONS WHO CAST BALLOTS	8
BALLOTS SEGREGATED AND NOT COUNTED	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	5
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	2

803-71-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. GIDON INDUSTRIES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT COMPANY AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (134 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	134
NUMBER OF PERSONS WHO CAST BALLOTS	115
BALLOTS SEGREGATED AND NOT COUNTED	2
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	70
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	43

839-71-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF WHITNEY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE TOWNSHIP OF WHITNEY, SAVE AND EXCEPT SUPERINTENDENT, PERSONS ABOVE THE RANK OF SUPERINTENDENT, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (10 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	8
NUMBER OF PERSONS WHO CAST BALLOTS	8
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	6
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	2

874-71-R: LOCAL 173, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA (APPLICANT) V. CLASS FREIGHT LINES LIMITED (RESPONDENT) V. CANADIAN TRANSPORTATION WORKERS UNION No. 199 N.C.C.L. (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE COMPANY WORKING IN AND OUT OF KITCHENER-WATERLOO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, DISPATCHERS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (8 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	10
NUMBER OF PERSONS WHO CAST BALLOTS	10
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	6
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	4

878-71-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. ROGERSON LUMBER COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PORT LORING, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (33 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		31
NUMBER OF PERSONS WHO CAST BALLOTS	28	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	7	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	21	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING NOVEMBER

NO VOTE CONDUCTED

737-71-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. METAL TEXTILE OF CANADA, DIVISION OF GENCOB OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF." (36 EMPLOYEES IN THE UNIT).

(SEE DECISION [1971] OLRB REP. 694).

806-71-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 759 (APPLICANT) V. PORT ARTHUR SHIPBUILDING CO. (RESPONDENT) V. UNITED STEELWORKERS OF AMERICA (INTERVENER #1) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER #2) V. LUMBER & SAWMILL WORKERS UNION, LOCAL 2693, OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (INTERVENER #3) V. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING & PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA - LOCAL 628 (INTERVENER #4). (4 EMPLOYEES).

831-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. VIS-U-RAY LIMITED (RESPONDENT). (2 EMPLOYEES).

(SEE DECISION [1971] OLRB REP. 703).

837-71-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. ALGOMA MAINTENANCE & SERVICES LIMITED (RESPONDENT) V. UNITED STEELWORKERS OF AMERICA (INTERVENER). (6 EMPLOYEES).

970-71-R: BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 183 AFFILIATED WITH SERVICE EMPLOYEES INTERNATIONAL UNION A.F. OF L., C.I.O., C.O.C. (APPLICANT) V. BEACON HILL LODGES OF CANADA LIMITED (RESPONDENT). (39 EMPLOYEES).

996-71-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 880 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. THE HOSPITAL COMMISSION, SARNIA GENERAL HOSPITAL (RESPONDENT) V. LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F. OF L., C.I.O., C.L.C. (INTERVENER). (12 EMPLOYEES).

1010-71-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION No. 880 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. CONCRETE CONSTRUCTION SUPPLIES OF WINDSOR LIMITED (RESPONDENT). (2 EMPLOYEES).

1105-71-R: CANADIAN TRANSPORTATION WORKERS UNION #199 (APPLICANT) V. CATHCART FREIGHT LINES (PETERBOROUGH) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DISPATCHERS, OFFICE AND SALES STAFF." (3 EMPLOYEES IN THE UNIT).

1108-71-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS UNION LOCAL 786 (APPLICANT) V. NORRIS IRON WORKS LIMITED (RESPONDENT). (NO EMPLOYEES).

1114-71-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION #397 (APPLICANT) V. DUFFERIN MATERIALS & CONSTRUCTION LTD. (RESPONDENT). (10 EMPLOYEES).

1123-71-R: CARPENTERS LOCAL 249 KINGSTON ONT. (APPLICANT) V. DODGE CONSTRUCTION COMPANY LIMITED (RESPONDENT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1988 (INTERVENER). (2 EMPLOYEES).

1155-71-R: RENOLD CANADA LIMITED EMPLOYEES ASSOCIATION (APPLICANT) V. RENOLD CANADA LTD. (RESPONDENT). (35 EMPLOYEES).

1172-71-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO: CLC (APPLICANT) V. SORRENTO MOTOR HOTEL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SUDBURY REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT FOREMEN, MANAGERS, PERSONS ABOVE THE RANK OF FOREMAN AND MANAGER, OFFICE AND CLERICAL STAFF, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (53 EMPLOYEES IN THE UNIT). (HAVING CONSIDERED THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES).

1194-71-R: KENNETH THOMPSON (APPLICANT) V. HOTEL AND RESTAURANT AND BARTENDERS INTERNATIONAL UNION, LOCAL 197 (RESPONDENT). (7 EMPLOYEES).

1206-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. STEED AND EVANS LIMITED (RESPONDENT). (12 EMPLOYEES).

1270-71-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA,
LOCAL ~~2486~~ (APPLICANT) V. FASSEL CONSTRUCTION CO. LTD. (RESPONDENT).
(2 EMPLOYEES).

1277-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL
~~#247~~ (APPLICANT) V. AMELIA CONSTRUCTION AND STEEL PLACING COMPANY
(RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT
IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS
OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR
OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY
OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE
RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

1082-71-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V.
RAYWAL LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWN
OF MARKHAM, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FORE-
MAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE
THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACA-
TION PERIOD." (77 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON VOTERS'	
LIST	75
NUMBER OF PERSONS WHO CAST BALLOTS	73
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	15
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	58

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

674-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA - LOCAL
~~527~~ (APPLICANT) V. MURRAY R. GRAY LIMITED (RESPONDENT) V. GROUP OF
EMPLOYEES (OBJECTORS).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT
IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES
OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS
ABOVE THE RANK OF NON-WORKING FOREMAN." (46 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		35
NUMBER OF PERSONS WHO CAST BALLOTS	34	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	34	

962-71-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. WOODINGFORD LODGE (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WOODSTOCK, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (59 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		63
NUMBER OF PERSONS WHO CAST BALLOTS	63	
BALLOTS SEGREGATED AND NOT COUNTED	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	24	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	37	

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING NOVEMBER

511-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. G.M. GEST CONSTRUCTION LIMITED (RESPONDENT) V. LABOURERS' INTERNATIONAL UNION OF N.A., ONTARIO PROVINCIAL DISTRICT COUNCIL (INTERVENER). (7 EMPLOYEES).

537-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION #493 (APPLICANT) V. COMMON CONSTRUCTION CO. LTD. (RESPONDENT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL (INTERVENER). (7 EMPLOYEES).

1071-71-R: TEXTILE WORKERS UNION OF AMERICA, AFL-CIO-CLC (APPLICANT) V. TEXPACK LIMITED (RESPONDENT) V. CANADIAN TEXTILE AND CHEMICAL UNION (INTERVENER). (42 EMPLOYEES).

1120-71-R: CANADIAN TRANSPORTATION WORKERS UNION No. 200 (APPLICANT) V. BUCKLEY CARTAGE (RESPONDENT) V. GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (INTERVENER). (50 EMPLOYEES).

1168-71-R: LOCAL UNION 742 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. PEMBROKE HYDRO ELECTRIC COMMISSION (RESPONDENT). (9 EMPLOYEES).

1170-71-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES & CANADA, LOCAL 124, OTTAWA - HULL (APPLICANT) V. CANADIAN JOHNS MANVILLE CO. LTD. (RESPONDENT). (3 EMPLOYEES).

1185-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA - LOCAL 527 (APPLICANT) V. C. A. PITTS ENGINEERING CONSTRUCTION LIMITED (RESPONDENT). (2 EMPLOYEES).

1199-71-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 607 (APPLICANT) V. CAMERON DRILLING COMPANY LIMITED (RESPONDENT). (4 EMPLOYEES).

1200-71-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 607 (APPLICANT) V. CAMERON DRILLING COMPANY LIMITED (RESPONDENT). (4 EMPLOYEES).

1222-71-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 759 (APPLICANT) V. MASCARIN AUTO BODY LIMITED (RESPONDENT). (2 EMPLOYEES).

1248-71-R: THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL UNION 759 (APPLICANT) V. NOR SHORE READY MIXED CONCRETE LTD. (RESPONDENT) V. THE LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2693 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (INTERVENER). (3 EMPLOYEES).

1254-71-R: OPERATIVE PLASTERERS' AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (APPLICANT) V. GENERAL PLASTERING CO. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (12 EMPLOYEES).

1256-71-R: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF UNITED STATES AND CANADA, LOCAL 117 (APPLICANT) V. PROGRESS PLASTERING CO. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (20 EMPLOYEES).

1257-71-R: OPERATIVE PLASTERERS' AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (APPLICANT) V. EDERE PLASTERING CO. LIMITED ALSO KNOWN AS VITALI PLASTERING CO. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (25 EMPLOYEES).

1258-71-R: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (APPLICANT) V. GOLD STAR PLASTERING CO. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (17 EMPLOYEES).

1259-71-R: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (APPLICANT) V. KINGSWAY PLASTERING CO. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (34 EMPLOYEES).

1266-71-R: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (APPLICANT) V. ATLAS PLASTERING CO. LIMITED ALSO KNOWN AS D. & E. PLASTERING CO. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (11 EMPLOYEES).

1302-71-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, TEAMSTERS LOCAL UNION 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. PRIMROSE PASTRIES LIMITED (RESPONDENT). (60 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED

OF DURING NOVEMBER

376-71-R: WILLIAM HENRY JESSOME, 109 CARLTON ST., ST. CATHARINES, FRANCESCO DI FELICE, 32 ST. GEORGE ST., ST. CATHARINES, DONALD WILLIAM DALE, 1842 VICTORIA AVE., STEVENSVILLE ONT., D. VERROCHIO, 211 NIAGARA (UPPER), ST. CATHARINES (APPLICANTS) V. LOCAL UNION 303 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (RESPONDENT). (6 EMPLOYEES). (DISMISSED).

889-71-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (RESPONDENT). (3 EMPLOYEES). (WITHDRAWN).

1097-71-R: PIERRE ARTS (APPLICANT) V. LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F. of L., C.I.O., C.L.C. (RESPONDENT) V. THE CANADIAN LINEN SUPPLY (ONTARIO) LIMITED (INTERVENER). (91 EMPLOYEES). (DISMISSED).

(SEE DECISION [1971] OLRB REP. 757).

1115-71-R: ROBERT F. MOREY (APPLICANT) V. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA & LOCAL 518 (UE) (RESPONDENT). (21 EMPLOYEES). (DISMISSED).

1141-71-R: VJEKOSLAV GALIC (APPLICANT) V. JEWELRY WORKER'S #43 (RESPONDENT). (10 EMPLOYEES). (GRANTED).

1146-71-R: EMPLOYEE'S OF EASTLAND METALS LTD. (THOMAS MARK) (NICK HALAR) (APPLICANT) V. SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, (GORD MCKELLAR) (RESPONDENT). (19 EMPLOYEES). (WITHDRAWN).

1193-71-R: NEIL MOORE (APPLICANT) V. HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION (LOCAL 197) A.F. OF L., C.I.O., C.L.C. (RESPONDENT). (1 EMPLOYEE). (GRANTED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

NOVEMBER

1179-71-U: ERIN ENGINEERING DIVISION LEASIDE CAR RENTALS LTD. (APPLICANT) V. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 353 (RESPONDENT). (WITHDRAWN).

1227-71-U: THE ONTARIO-MINNESOTA PULP AND PAPER COMPANY LIMITED (APPLICANT) V. ALLAN ANDERSON ET AL (RESPONDENTS). (WITHDRAWN).

1230-71-U: LOCAL 48 OF THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION (APPLICANT) V. NORTHDOWN DRYWALL & CONSTRUCTION LIMITED (RESPONDENT). (WITHDRAWN).

1271-71-U: KANSAS CONSTRUCTION LIMITED (APPLICANT) V. COUNCIL OF CONCRETE FORMING TRADE UNIONS & LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 183 (RESPONDENTS). (WITHDRAWN).

APPLICATION FOR DECLARATION THAT LOCK-OUT UNLAWFUL DISPOSED OF DURING

NOVEMBER

1231-71-U: LOCAL 48 OF THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION (APPLICANT) V. NORTHDOWN DRYWALL & CONSTRUCTION LIMITED (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING NOVEMBER

253-71-U: MATHIAS AND NICOL (APPLICANT) V. BERNARD D. VONDETTE ET AL (RESPONDENT). (WITHDRAWN).

254-71-U: COMMONWEALTH CONSTRUCTION COMPANY LIMITED (APPLICANT) V. LLOYD GODSELIN (RESPONDENT). (WITHDRAWN).

255-71-U: COMMONWEALTH CONSTRUCTION COMPANY LIMITED (APPLICANT) V. ROBERT ARMSTRONG ET AL (RESPONDENT). (WITHDRAWN).

256-71-U: CANADIAN INTERNATIONAL COMSTOCK COMPANY LIMITED (APPLICANT) V. J. GALL ET AL (RESPONDENT). (WITHDRAWN).

257-71-U: CANADIAN INTERNATIONAL COMSTOCK COMPANY LIMITED (APPLICANT) V. H. JERRY ET AL (RESPONDENT). (WITHDRAWN).

258-71-U: CANADIAN INTERNATIONAL COMSTOCK COMPANY LIMITED (APPLICANT) V. G. BELL ET AL (RESPONDENT). (WITHDRAWN).

259-71-U: CANADIAN INTERNATIONAL COMSTOCK COMPANY LIMITED (APPLICANT) V. N. JARVI ET AL (RESPONDENT). (WITHDRAWN).

260-71-U: CANADIAN INTERNATIONAL COMSTOCK COMPANY LIMITED (APPLICANT) V. A. RAUKIN ET AL (RESPONDENT). (WITHDRAWN).

261-71-U: CANADIAN INTERNATIONAL COMSTOCK COMPANY LIMITED (APPLICANT) V. Z. ZOMBORI ET AL (RESPONDENT). (WITHDRAWN).

262-71-U: COMMONWEALTH CONSTRUCTION COMPANY LIMITED (APPLICANT) V. DANIEL GAGNE ET AL (RESPONDENT). (WITHDRAWN).

263-71-U: COMMONWEALTH CONSTRUCTION COMPANY LIMITED (APPLICANT) V. TELFORD J. ADVENT ET AL (RESPONDENT). (WITHDRAWN).

264-71-U: CANADIAN INTERNATIONAL COMSTOCK COMPANY LIMITED (APPLICANT) V. B. BANISH ET AL (RESPONDENT). (WITHDRAWN).

265-71-U: COMMONWEALTH CONSTRUCTION COMPANY LIMITED (APPLICANT) V. EDWARD ADAMIK ET AL (RESPONDENT). (WITHDRAWN).

266-71-U: GREAT LAKES STEEL PRODUCTS LIMITED (APPLICANT) V. R. WIENS ET AL (RESPONDENT). (WITHDRAWN).

270-71-U: CANADIAN INTERNATIONAL COMSTOCK COMPANY LIMITED (APPLICANT) V. J. BEAUCAGE ET AL (RESPONDENT). (WITHDRAWN).

271-71-U: CANADIAN INTERNATIONAL COMSTOCK COMPANY LIMITED (APPLICANT) V. J. GODIN ET AL (RESPONDENT). (WITHDRAWN).

819-71-U: CLOUTIER BROTHERS LTD. (APPLICANT) V. AUGUSTIN MAINVILLE (RESPONDENT). (WITHDRAWN).

820-71-U: CLOUTIER BROTHERS LTD. (APPLICANT) V. THE LUMBER AND SAW-MILL WORKERS' UNION, LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (RESPONDENT). (WITHDRAWN).

1085-71-U: LUMBER AND SAWMILL WORKERS UNION LOCAL 2995, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. LECOIRS LUMBER CO. (RESPONDENT). (WITHDRAWN).

1104-71-U: ST. MARYS CEMENT COMPANY (APPLICANT) V. JOSEPH BRYCE HANDLEY, JOSEPH FLOYD FORTIN, DOUGLAS EDWARD MCCOY, PETER SPENCE CONWAY, BRIAN DAVID SMITH, ROBERT SCHUYLER THOMPSON, GORDON ALEXANDER MCWALTERS (RESPONDENTS). (GRANTED).

1180-71-U: ERIN ENGINEERING DIVISION, LEASIDE CAR RENTALS LTD. (APPLICANT) V. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 353 (RESPONDENT). (WITHDRAWN).

1232-71-U: LOCAL 48 OF THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION (APPLICANT) V. NORTHDOWN DRYWALL & CONSTRUCTION LIMITED (RESPONDENT). (WITHDRAWN).

COMPLAINTS UNDER SECTION 79 (FORMERLY S. 65) (UNFAIR LABOUR PRACTICE)

DISPOSED OF DURING NOVEMBER

760-71-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. METAL TEXTILE CORPORATION OF CANADA LTD. (RESPONDENT). (WITHDRAWN).

786-71-U: SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 204 (COMPLAINANT) V. ORILLIA AMBULANCE SERVICE (RESPONDENT). (WITHDRAWN).

917-71-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. FOSTER PARENTS' PLAN OF CANADA (RESPONDENT).

- AND -

918-71-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. FOSTER PARENTS' PLAN OF CANADA (RESPONDENT). (DISMISSED).

932-71-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. ZEHR'S MARKETS LIMITED (RESPONDENT). (GRANTED).

(SEE DECISION [1971] OLRB REP. 706).

997-71-U: PERCY WOODS (COMPLAINANT) V. NAPANEE INDUSTRIES LTD. (RESPONDENT). (DISMISSED).

(SEE DECISION [1971] OLRB REP. 730).

1012-71-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V. HANFORD LUMBER LIMITED (RESPONDENT). (WITHDRAWN).

1073-71-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V. HANFORD LUMBER LIMITED (RESPONDENT). (WITHDRAWN).

1080-71-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (COMPLAINANT) V. SWINGLINE OF CANADA LIMITED (RESPONDENT). (DISMISSED).

(SEE DECISION [1971] OLRB REP. 765).

1125-71-U: CHARLES GLIGORICH (COMPLAINANT) V. CONSUMERS' GAS COMPANY LIMITED AND INTERNATIONAL CHEMICAL WORKERS UNION, LOCAL 513 (RESPONDENTS). (WITHDRAWN).

1195-71-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2679 (COMPLAINANT) V. SUCCESS DISPLAY LIMITED (RESPONDENT). (WITHDRAWN).

APPLICATION UNDER SECTION 35(A) DISPOSED OF DURING NOVEMBER

128-70-M: HELEN ZANDSTRA (APPLICANT) V. LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U.-A.F.L.-C.I.O.-C.L.C. (RESPONDENT TRADE UNION) V. THE NORFOLK HOSPITAL ASSOCIATION (RESPONDENT EMPLOYER). (WITHDRAWN).

APPLICATIONS UNDER SECTION 55 (FORMERLY S. 47A) DISPOSED OF DURING

NOVEMBER

471-71-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION. RESTAURANT, CAFETERIA AND TAVERN EMPLOYEES' UNION, LOCAL 254 (APPLICANT) V. CAROUSEL INN, OSHAWA, OPERATED BY ROUGEDALE CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OSHAWA, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, CHIEF ACCOUNTANT, CHIEF ENGINEER, HEAD HOUSEKEEPER, HEAD CHEF, DESK CLERKS, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK."

NUMBER OF NAMES OF PERSONS ON REVISED
VOTERS' LIST

7

NUMBER OF PERSONS WHO CAST BALLOTS

7

NUMBER OF BALLOTS MARKED IN FAVOUR
OF APPLICANT

3

NUMBER OF BALLOTS MARKED AGAINST
APPLICANT

4

688-71-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. WOODWAY STRUCTURAL COMPONENTS (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (DISMISSED).

(SEE DECISION [1971] OLRB REP. 732).

933-71-R: LOCAL 247, LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION (APPLICANT) V. DEVON GRAPHICS (RESPONDENT) V. WALKERVILLE PRINTING COMPANY LIMITED (INTERVENER #1) V. WINDSOR PRINTING PRESSMEN & ASSISTANTS' UNION LOCAL 274 SUBORDINATE TO INTERNATIONAL PRINTING PRESSMEN & ASSISTANTS' UNION OF NORTH AMERICA (INTERVENER #2) V. LOCAL 133, INTERNATIONAL BROTHERHOOD OF BOOKBINDERS (INTERVENER #3) V. WINDSOR PRINT & LITHO LTD. (INTERVENER #4). (GRANTED).

UNIT: "ALL EMPLOYEES OF DEVON GRAPHICS AT WINDSOR ENGAGED IN THE PRODUCTION OF LITHOGRAPHY BY LITHOGRAPHIC, PLANAGRAPHIC, PHOTOLITHOGRAPHIC OR GELATINE PROCESSES, SAVE AND EXCEPT GENERAL SUPERINTENDED AND PERSONS ABOVE THE RANK OF GENERAL SUPERINTENDENT."

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	6
NUMBER OF PERSONS WHO CAST BALLOT	6
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	6
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER #2	0

1177-71-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA AND LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA (APPLICANTS) V. LOBLAW GROCETERIAS CO. LIMITED (RESPONDENT) V. UNION OF CANADIAN RETAIL EMPLOYEES (INTERVENER #1) V. POWER SUPER MARKETS LIMITED (INTERVENER #2). (GRANTED).

APPLICATION UNDER SECTION 76 (FORMERLY S. 63) (FINANCIAL STATEMENT REQUESTED BY TRADE UNION MEMBER)

500-71-M: GORDON O. NICHOLLS (COMPLAINANT) V. JOHN MARTIN, PRES., C.U.M.E. (RESPONDENT). (DISMISSED).

JURISDICTIONAL DISPUTES

106-70-JD: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 607 (COMPLAINANT) V. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF

THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 628 AND CANADIAN INTERNATIONAL COMSTOCK COMPANY LIMITED (RESPONDENTS).

(SEE DECISION [1971] OLRB REP. 718).

724-71-JD: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 700 (COMPLAINANT) V. DUFFERIN PRECAST COMPANY, A DIVISION OF DUFFERIN MATERIALS & CONSTRUCTION LTD., AND LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCALS 506 AND 1059 (RESPONDENTS).

(SEE DECISION [1971] OLRB REP. 698).

1267-71-JD: DEHETRI TREMBLAY LATHING & PLASTERING LTD. (COMPLAINANT) V. 1) THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 494, 2) WOOD, WIRE & METAL LATHERS INTERNATIONAL UNION, LOCAL 360 3) MCKAY COCKER LTD. (RESPONDENTS). (WITHDRAWN).

REFERENCE TO BOARD PURSUANT TO SECTION 96 (FORMERLY S. 79A)

726-71-M: THE UNIVERSITY OF WATERLOO (EMPLOYER) V. THE FACULTY ASSOCIATION OF THE UNIVERSITY OF WATERLOO (TRADE UNION). (DISMISSED).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

737-71-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. METAL TEXTILE OF CANADA, DIVISION OF GENCAB OF CANADA LIMITED (RESPONDENT). (REQUEST DENIED).

1108-71-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS UNION LOCAL 786 (APPLICANT) V. NORRIS IRON WORKS LIMITED (RESPONDENT). (REQUEST DENIED).

1123-71-R: CARPENTERS LOCAL 249 KINGSTON ONT. (APPLICANT) V. DODGE CONSTRUCTION COMPANY LIMITED (RESPONDENT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1988 (INTERVENER). (REQUEST DENIED).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 79

(FORMERLY S. 65)

587-71-U: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (COMPLAINANT)

V. SUN PARLOUR GREENHOUSE GROWERS' CO-OPERATIVE LIMITED, ARMSTRONG PRODUCE COMPANY LIMITED, A.M.C. PRODUCE SHIPPERS INCORPORATED, MASTRONARDI PRODUCE LIMITED, GARDEN ACRE SALES, AN AGENCY OF ONTARIO GREENHOUSE PRODUCERS MARKETING BOARD (RESPONDENTS). (REQUEST DENIED).

(SEE DECISION [1971] OLRB REP. 743).

910-71-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. GIDON INDUSTRIES LIMITED (RESPONDENT). (REQUEST DENIED).

939-71-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (COMPLAINANT) V. MILL FARMS PRODUCE LTD. (RESPONDENT). (REQUEST DENIED).

997-71-U: PERCY WOODS (COMPLAINANT) V. NAPANEE INDUSTRIES LTD. (RESPONDENT). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 96

(FORMERLY S. 79A)

1013-71-M: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1669 (TRADE UNION) V. G. A. BAERT CONSTRUCTION (1964) LTD. (EMPLOYER). (REQUEST DENIED).

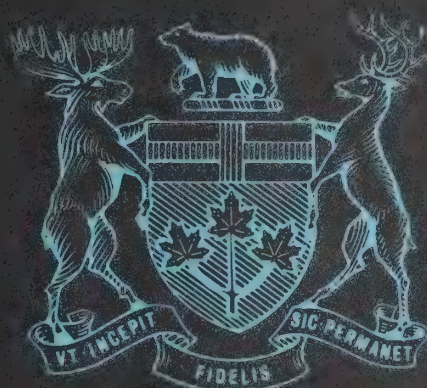
(SEE DECISION [1971] OLRB REP. 760).

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971] OLRB REP.

DECEMBER

PAGES 766 - 827



ONTARIO

Monthly Report

ONTARIO LABOUR RELATIONS BOARD

ONTARIO LABOUR RELATIONS BOARD REPORTS

A MONTHLY SERIES OF DECISIONS FROM THE

ONTARIO LABOUR RELATIONS BOARD

CITED [1971] OLRB REP.

BARGAINING UNIT - CONSTRUCTION INDUSTRY - APPROPRIATE UNIT -
 WHETHER UNIT WOULD LEAD TO CONFUSION AMONG EMPLOYEES -
 WHETHER PROJECT CERTIFICATION - EFFECT OF EMPLOYEES
 METHOD OF OPERATION.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
 V. MATTHEWS GROUP LIMITED 823

CHARGES - COERCION AND INTIMIDATION - WHETHER EMPLOYEES
 INFLUENCED TO JOIN A TRADE UNION.

CHRISTIAN LABOUR ASSOCIATION OF CANADA V. DELUXE STAIR
 CUSHION LTD. V. RESILIENT FLOOR WORKERS, UNITED BROTHER-
 HOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2965 783

COLLECTIVE AGREEMENT - EVIDENCE - VOLUNTARY RECOGNITION -
 BARGAINING AGENT FOR ALL EMPLOYEES IN ONTARIO -
 WHETHER TRADE UNION ENTITLED TO REPRESENT EMPLOYEES
 AT THE TIME AGREEMENT WAS ENTERED INTO.

THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES
 OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED
 STATES AND CANADA - LOCAL 628 V. ALGOMA MAINTENANCE &
 SERVICES LIMITED V. UNITED STEELWORKERS OF AMERICA 815

COLLECTIVE AGREEMENT - WHETHER PERSON HAS AUTHORITY TO
 SIGN COLLECTIVE AGREEMENT - WHETHER PERSON HELD
 OUT AS HAVING AUTHORITY - WHETHER COLLECTIVE AGREE-
 MENT IN EFFECT.

THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF
 AMERICA, LOCAL 1669 V. G. A. BAERT CONSTRUCTION (1964)
 LTD. 766

CONSTITUTIONAL LAW - JURISDICTION - RELIGIOUS OBJECTION -
 EMPLOYEE INSTALLING AND TESTING COMMUNICATIONS AND
 RELATED EQUIPMENT - WHETHER BOARD HAS JURISDICTION
 TO ENTERTAIN APPLICATION.

ROBERT VANDERHILL V. COMMUNICATIONS WORKERS OF AMERICA
 V. NORTHERN ELECTRIC COMPANY LIMITED 790

CONSTRUCTION INDUSTRY - BARGAINING UNIT - APPROPRIATE UNIT -
 WHETHER UNIT WOULD LEAD TO CONFUSION AMONG EMPLOYEES -
 WHETHER PROJECT CERTIFICATION - EFFECT OF EMPLOYEES
 METHOD OF OPERATION.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
v. MATTHEWS GROUP LIMITED 823

EVIDENCE - COLLECTIVE AGREEMENT - VOLUNTARY RECOGNITION -
BARGAINING AGENT FOR ALL EMPLOYEES IN ONTARIO -
WHETHER TRADE UNION ENTITLED TO REPRESENT EMPLOYEES
AT THE TIME AGREEMENT WAS ENTERED INTO.

THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES
OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED
STATES AND CANADA - LOCAL 628 v. ALGOMA MAINTENANCE &
SERVICES LIMITED v. UNITED STEELWORKERS OF AMERICA 815

JURISDICTION - CONSTITUTIONAL LAW - RELIGIOUS OBJECTION -
EMPLOYEE INSTALLING AND TESTING COMMUNICATIONS AND
RELATED EQUIPMENT - WHETHER BOARD HAS JURISDICTION
TO ENTERTAIN APPLICATION.

ROBERT VANDERHILL v. COMMUNICATIONS WORKERS OF AMERICA
v. NORTHERN ELECTRIC COMPANY LIMITED 790

JURISDICTIONAL DISPUTE - LABOURERS AND CARPENTERS CONSTRUCTION
AND ERECTION OF FORMS FOR CONCRETE CURBS, RETAINING WALLS,
ETC. - FACTORS CONSIDERED.

DUNKER CONSTRUCTION LIMITED v. LABOURERS INTERNATIONAL
UNION OF NORTH AMERICA, LOCAL 1081, THE GRAND RIVER
VALLEY DISTRICT COUNCIL OF THE UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA ON BEHALF OF LOCAL
UNIONS 498, 949, 1940 AND 2173 813

JURISDICTIONAL DISPUTE - LABOURERS AND CARPENTERS - EFFECT
OF PAST PRACTICE, ECONOMY, TOLLS AND SKILLS - TUBULAR
METAL SCAFFOLDING IN EXCESS OF FOURTEEN FEET.

LEADER MASONRY & FORMING LIMITED v. LABOURERS INTERNA-
TIONAL UNION OF NORTH AMERICA, LOCAL 837, UNITED BRO-
THERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 18,
THE FRID CONSTRUCTION COMPANY LIMITED 789

MEMBERSHIP EVIDENCE - APPLICATIONS FOR MEMBERSHIP CONTAINING
LOCAL NUMBER - RECEIPTS NOT REFERRING TO LOCAL CARDS AND
RECEIPTS COUNTERSIGNED ON SAME DATE - WHETHER BOARD'S
REQUIREMENTS MET.

LOCAL UNION 742 INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS v. HYDRO-ELECTRIC COMMISSION OF THE CITY OF PEM-
BROKE v. EMPLOYEE 814

PETITION - FAILURE TO DISCLOSE NAME OF EMPLOYER ON PETITION -
WHETHER REQUIREMENT GOING TO SUBSTANCE OF MATTER.

SERVICE EMPLOYEES UNION - LOCAL 204 AFFILIATED WITH
THE S.E.I.U., A.F. OF L., C.I.O. C.L.C. v. LEISURE
WORLD NURSING HOMES LIMITED v. GROUP OF EMPLOYEES 810

PETITION - TERMINATION - EMPLOYEES GIVEN PERMISSION BY
GENERAL MANAGER TO LEAVE WORK STATIONS AND ATTEND
AT THE OFFICE OF THE ADJACENT PLANT TO SIGN PETITION -
WHETHER EMPLOYER ASSISTANCE.

JOHN RICHMOND v. UNITED STEELWORKERS OF AMERICA v.
BELLOWS-VALVAIR, LTD. 771

PETITION - S. 7(4) - COMPANY MEETING SUGGESTION BY MANAGING
DIRECTOR THAT PLANT COMMITTEE MIGHT BETTER SERVE
INTERESTS OF EMPLOYEES - THAT COMPANY MIGHT CLOSE ITS
DOORS AND COMPANY CONDUCTING VOTE - WHETHER TRUE
WISHES OF EMPLOYEES LIKELY TO BE DISCLOSED BY A
REPRESENTATION VOTE.

UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA
(UE) v. NORESKO MANUFACTURING CO. LTD. v. GROUP OF EM-
PLOYEES 822

PRACTICE - REPRESENTATION VOTE - EMPLOYEES NOT REPRESENTED
BY TRADE UNION - APPLICATION FOR CERTIFICATION BY TWO
COMPETING UNIONS - WHETHER EMPLOYEES TO BE OFFERED AN
OPPORTUNITY TO EXPRESS THEIR WISHES - WHETHER THEY
WISH NO TRADE UNION TO REPRESENT THEM - WHETHER VOTERS
GIVEN A CHOICE AMONG APPLICANTS AND NO TRADE UNION.

LUMBER & SAWMILL WORKERS UNION, LOCAL 2537, THE UNITED
BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA v.
WHOLESALE HOMES LIMITED AND LABOURERS' INTERNATIONAL
UNION OF NORTH AMERICA, LOCAL 1036 v. WHOLESALE HOMES
LIMITED 818

PRACTICE - TERMINATION - APPLICATION FILED THREE DAYS AFTER
BOARD DISMISSED PRIOR APPLICATION - WHETHER UNTIMELY
- EFFECT OF TRINIDAD LEASEHOLDS DOCTRINE - RIGHT TO TEST
A TRADE UNION'S STRENGTH AMONG EMPLOYEES BALANCED AGAINST
CONTINUITY AND STABILITY OF COLLECTIVE BARGAINING
RELATIONSHIP - WHETHER BOARD WILL ENTERTAIN SECOND
APPLICATION.

FRED WEPPLER, DONALD WRIGHT, BERNIE STEVENSON AND LARRY HAMEL v. INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA AFL-CIO-CLC v. SEVEN-UP (ONTARIO) LIMITED	791
RELIGIOUS OBJECTION - JURISDICTION - CONSTITUTIONAL LAW - EMPLOYEE INSTALLING AND TESTING COMMUNICATIONS AND RELATED EQUIPMENT - WHETHER BOARD HAS JURISDICTION TO ENTERTAIN APPLICATION.	
ROBERT VANDERHILL v. COMMUNICATIONS WORKERS OF AMERICA v. NORTHERN ELECTRIC COMPANY LIMITED	790
REPRESENTATION VOTE - CAMPAIGN LITERATURE - WHETHER MISLEADING OR CONFUSING TO EMPLOYEES - WHETHER TRUE WISHES OF EM- PLOYEES IMPEDED.	
UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA v. THE VALLEY CITY MANUFACTURING COMPANY LIMITED	773
REPRESENTATION VOTE - PRACTICE - EMPLOYEES NOT REPRESENTED BY TRADE UNION - APPLICATION FOR CERTIFICATION BY TWO COMPETING UNIONS - WHETHER EMPLOYEES TO BE OFFERED AN OPPORTUNITY TO EXPRESS THEIR WISHES - WHETHER THEY WISH NO TRADE UNION TO REPRESENT THEM - WHETHER VOTERS GIVEN A CHOICE AMONG APPLICANTS AND NO TRADE UNION.	
LUMBER & SAWMILL WORKERS UNION, LOCAL 2537, THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA v. WHOLESALE HOMES LIMITED AND LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1036 v. WHOLESALE HOMES LIMITED	818
REPRESENTATION VOTE - NATURE OF PROPAGANDA - WHETHER MIS- LEADING - WHETHER EMPLOYEES UNDULY INFLUENCED - WHETHER REPRESENTATION VOTE REFLECTS TRUE WISHES OF EMPLOYEES.	
UNITED STEELWORKERS OF AMERICA v. ALCAN BUILDING PRO- DUCTS LIMITED	806
REPRESENTATION VOTE - SCRUTINEER NOT AN EMPLOYEE - WHETHER TRUE WISHES OF EMPLOYEES AFFECTED.	
LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 v. SWINGLINE OF CANADA LTD.	809

SALE OF BUSINESS - S. 47(A) - PURCHASE OF DEPOT AS A GOING CONCERN - TRANSFER OF EMPLOYEES - THREE MONTH DELAY - INTERMINGLING - WHETHER BOARD WILL ORDER A REPRESENTATION VOTE.

AVONDALE DAIRY LIMITED v. RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, LOCAL 440, AFL/CIO/CLC 781

TERMINATION - PETITION - EMPLOYEES GIVEN PERMISSION BY GENERAL MANAGER TO LEAVE WORK STATIONS AND ATTEND AT THE OFFICE OF THE ADJACENT PLANT TO ASSIGN PETITION - WHETHER EMPLOYER ASSISTANCE.

JOHN RICHMOND v. UNITED STEELWORKERS OF AMERICA v. BELLOWS-VALVAIR, LTD. 771

TERMINATION - PRACTICE - APPLICATION FILED THREE DAYS AFTER BOARD DISMISSED PRIOR APPLICATION - WHETHER UNTIMELY - EFFECT OF TRINIDAD LEASEHOLDS DOCTRINE - RIGHT TO TEST A TRADE UNION'S STRENGTH AMONG EMPLOYEES BALANCED AGAINST CONTINUITY AND STABILITY OF COLLECTIVE BARGAINING RELATIONSHIP - WHETHER BOARD WILL ENTERTAIN SECOND APPLICATION.

FRED WEPPLER, DONALD WRIGHT, BERNIE STEVENSON AND LARRY HAMEL v. INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA AFL-CIO-CLC v. SEVEN-UP (ONTARIO) LIMITED 791

TERMINATION - S. 45A - WHETHER TRADE UNION REPRESENTED EMPLOYEES IN BARGAINING UNIT - RECOGNITION DOCUMENT - WHETHER APPLICATION FILED WITHIN FIRST YEAR OF COLLECTIVE AGREEMENT.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 v. UNITED STEELWORKERS OF AMERICA v. DELLELCE CONSTRUCTION AND EQUIPMENT 778

ACTIVITY WITH THE KNOWLEDGE OF THE EMPLOYER FOR SOME TIME. FURTHER EVIDENCE INDICATED THAT OTHER UNION ADHERENTS ARE STILL EMPLOYED BY THE COMPANY.

3. THE AGGRIEVED EMPLOYEE BECAUSE HE WAS A UNION ADHERENT IS NOT ENTITLED TO IMMUNITY FROM DISMISSAL. NOTWITHSTANDING THAT HE IS INVOLVED WITH THE UNION THE COMPANY IS STILL ENTITLED TO EXPECT A SATISFACTORY WORK PERFORMANCE FROM HIM. HAVING REGARD TO THE EVIDENCE WE ARE SATISFIED THAT THE COMPANY'S EXPLANATION IS CREDIBLE AND ACCORDINGLY THE COMPLAINANT HAS NOT SUSTAINED THE BURDEN OF PROOF BY SHOWING THAT THE AGGRIEVED EMPLOYEE WAS DISMISSED FOR UNION ACTIVITY.

4. THE COMPLAINT IS THEREFORE DISMISSED.

1013-71-M: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1669 (TRADE UNION) v. G. A. BAERT CONSTRUCTION (1964) LTD. (EMPLOYER).

BEFORE: J. H. BROWN, Q.C. ALTERNATE CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND A. MAIN.

DECISION OF THE BOARD: DECEMBER 1, 1971.

1. THIS IS A REFERENCE FROM THE MINISTER MADE UNDER SECTION 96 OF THE ACT.

2. A REQUEST WAS MADE TO THE MINISTER BY THE TRADE UNION FOR THE APPOINTMENT OF A NOMINEE FOR THE EMPLOYER TO A BOARD OF ARBITRATION PURSUANT TO SECTION 37(4) OF THE ACT. THE EMPLOYER OBJECTED TO THE MINISTER MAKING SUCH AN APPOINTMENT ON THE GROUNDS THAT THERE WAS NO COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE EMPLOYER AND THE TRADE UNION. THE MINISTER ACCORDINGLY HAS REFERRED TO THE BOARD THE QUESTION AS TO WHETHER, IN FACT, THERE IS AN EXISTING COLLECTIVE AGREEMENT BETWEEN THE EMPLOYER AND THE TRADE UNION.

3. THE EVIDENCE OF WILLIAM SHERMAN, THE BUSINESS REPRESENTATIVE OF THE TRADE UNION (HEREINAFTER REFERRED TO AS LOCAL 1669), RELATING TO THE QUESTION REFERRED TO THE BOARD IS OUTLINED BELOW. EARLY IN AUGUST OF 1970 THE EMPLOYER (HEREINAFTER REFERRED TO AS BAERT) COMMENCED WORK ON A BUILDING PROJECT FOR THE BANK OF NOVA SCOTIA IN KENORA. THE PROJECT SUPERINTENDENT FOR BAERT SECURED CARPENTERS FROM LOCAL 1669 TO WORK ON THE PROJECT. ON AUGUST 24, 1970, SHERMAN FILED AN APPLICATION FOR CERTIFICATION WITH THE BOARD FOR A UNIT OF CARPENTERS AND APPRENTICES IN THE EMPLOY OF BAERT IN THE DISTRICT OF KENORA. IN THE APPLICATION, REFERENCE WAS MADE TO THE BANK PROJECT OF BAERT IN KENORA. ACCORDING TO SHERMAN, LOCAL 1669 HAD SUFFICIENT EVIDENCE OF MEMBERSHIP AMONG THE

EMPLOYEES OF BAERT SO AS TO ENTITLE THE UNION TO OUTRIGHT CERTIFICATION. SUBSEQUENT TO THE FILING OF THE APPLICATION FOR CERTIFICATION, SHERMAN HAD A TELEPHONE CONVERSATION WITH LEO HELGASON, A VICE-PRESIDENT OF BAERT, WHO TOLD SHERMAN THAT THERE WAS NO NEED FOR LOCAL 1669 TO APPLY FOR CERTIFICATION AS BAERT WAS PREPARED TO VOLUNTARILY ENTER INTO A COLLECTIVE AGREEMENT WITH THE UNION. SHERMAN TOLD HELGASON THAT HE WOULD COME TO WINNIPEG AND THAT WHEN BAERT SIGNED A COLLECTIVE AGREEMENT WITH LOCAL 1669 HE WOULD WITHDRAW THE APPLICATION FOR CERTIFICATION. SHERMAN DID VISIT THE OFFICES OF BAERT IN ST. BONIFACE AND MET WITH HELGASON AND A PERSON WHO HE BELIEVED TO BE JULES BAERT, AN OWNER OF THE COMPANY. ON THAT OCCASION, HE LEFT WITH THEM A SHORT FORM OF COLLECTIVE AGREEMENT WHICH INCORPORATED BY REFERENCE THE CURRENT COLLECTIVE AGREEMENT BETWEEN LOCAL 1669 AND THE CONSTRUCTION ASSOCIATION OF THUNDER BAY INCORPORATED. SHERMAN LEFT A COPY OF THE LATTER AGREEMENT WITH HELGASON AND BAERT. THE SAID SHORT FORM OF AGREEMENT WAS NOT EXECUTED ON THAT OCCASION.

4. ON A SUBSEQUENT OCCASION SHERMAN AGAIN WENT TO THE OFFICES OF BAERT AND WAS ADVISED BY THE RECEPTIONIST THAT BOTH JULES AND HIS SON ROBERT BAERT WERE IN CONFERENCE. WHILE WAITING IN THE RECEPTION AREA, SHERMAN THOUGHT HE COULD HEAR THE VOICE OF JULES BAERT TALKING TO HELGASON. HELGASON CAME OUT OF THE OFFICE AND INTRODUCED SHERMAN TO NORMAN MILLER. HELGASON TOLD SHERMAN THAT MILLER WOULD LOOK AFTER THE SIGNING OF THE COLLECTIVE AGREEMENT. SHERMAN FOLLOWED MILLER TO HIS OFFICE AND MILLER SIGNED TWO SHORT FORMS OF COLLECTIVE AGREEMENT WHICH WERE DATED SEPTEMBER 1, 1970 ON BEHALF OF BAERT. SHERMAN SIGNED THEM ON BEHALF OF LOCAL 1669. SHERMAN ASKED MILLER IF HE WAS GOING TO PLACE THE COMPANY SEAL ON THE DOCUMENTS. MILLER LEFT AND RETURNED, NOT WITH A COMPANY SEAL, BUT RATHER WITH A RUBBER STAMP WITH THE COMPANY NAME ON ITS, WHICH HE STAMPED BELOW HIS SIGNATURE. MILLER RETAINED ONE COPY AND SHERMAN THE OTHER COPY. NO WITNESSES WERE PRESENT WHEN MILLER AND SHERMAN SIGNED THE SHORT FORMS OF AGREEMENT DATED SEPTEMBER 1, 1970. SHERMAN THEN LEFT THE BAERT OFFICES. SHERMAN TESTIFIED THAT HE THOUGHT MILLER HAD SOMETHING TO DO WITH PERSONNEL FOR BAERT.

5. WE WOULD MENTION THAT THE BOARD RECEIVED A TELEGRAM FROM SHERMAN DATED AUGUST 27, 1970 WITH REFERENCE TO LOCAL 1669'S APPLICATION FOR CERTIFICATION FOR A UNIT OF EMPLOYEES OF BAERT, THE BODY OF WHICH READS:

WE WISH TO ADVISE THAT A UNION COLLECTIVE AGREEMENT HAS BEEN SIGNED WITH THIS COMPANY WHICH WILL BE IN EFFECT COMMENCING SEPTEMBER 1, 1970 THEREFORE WE KINDLY REQUEST LEAVE OF THE BOARD TO WITHDRAW OUR APPLICATION FOR CERTIFICATION

BY A DECISION DATED AUGUST 28, 1970, THE BOARD PERMITTED THE APPLICATION TO BE WITHDRAWN.

6. THE EVIDENCE OF NORMAN MILLER IS THAT HE HAS BEEN EMPLOYED BY BAERT FOR SEVEN YEARS AS A PURCHASER. MORE SPECIFICALLY, MILLER'S JOB IS TO PURCHASE AND DISPATCH MATERIALS TO CONSTRUCTION JOB SITES WHERE BAERT HAS CONTRACTS. MILLER TESTIFIED THAT HE HAD BEEN ADVISED BY THE SUPERINTENDENT ON THE KENORA PROJECT THAT SHERMAN WANTED "A PIECE OF PAPER SIGNED". ACCORDING TO MILLER, SHERMAN TRIED TO COMMUNICATE WITH HIM BY TELEPHONE ON A NUMBER OF OCCASIONS BUT THAT MILLER IGNORED THE MESSAGES THAT WERE LEFT BY SHERMAN. MILLER TESTIFIED THAT SHERMAN FINALLY DID COMMUNICATE WITH HIM BY TELEPHONE AND ARRANGEMENTS WERE MADE FOR HIM TO COME TO THE BAERT OFFICE SO THAT MILLER COULD SIGN "SOMETHING". SHERMAN DID COME TO THE BAERT OFFICE AND MILLER SIGNED THE SHORT FORMS OF AGREEMENT DATED SEPTEMBER 1, 1970 AND PLACED THE RUBBER STAMP OF THE COMPANY ON THE DOCUMENTS. SHERMAN THEN LEFT THE OFFICE. THE EVIDENCE OF MILLER IS THAT HIS JOB DOES NOT ENTAIL ANY RESPONSIBILITIES WITH RESPECT TO LABOUR RELATIONS.

7. MILLER TESTIFIED IN EXAMINATION-IN-CHIEF THAT HE MIGHT HAVE MET SHERMAN THROUGH HELGASON IN THE OFFICE OF THE LATTER IN JUNE OR JULY OF 1970. IN ANY EVENT, HE KNEW THAT SHERMAN WAS A UNION REPRESENTATIVE AND RECOGNIZED HIM WHEN SHERMAN CAME TO THE BAERT OFFICE. MILLER DID NOT THINK HE HAD SPOKEN TO HELGASON ON THE DAY THAT HE (MILLER) AND SHERMAN SIGNED THE SHORT FORMS OF COLLECTIVE AGREEMENT. IN CROSS-EXAMINATION, MILLER ADMITTED THAT HELGASON MIGHT HAVE BEEN PRESENT WHEN SHERMAN CAME INTO THE OFFICE OF BAERT AND THAT, IN FACT, HE REALLY COULD NOT REMEMBER.

8. THE EVIDENCE OF SHERMAN IS THAT AFTER THE SHORT FORM OF AGREEMENT DATED SEPTEMBER 1, 1970 WAS EXECUTED BY MILLER AND HIMSELF, SHERMAN CONTINUED TO PROVIDE MEMBERS OF LOCAL 1669 TO BAERT ON ITS KENORA BANK PROJECT. ON DECEMBER 21, 1970. SHERMAN WROTE A LETTER TO BAERT ADDRESSED TO THE ATTENTION OF MESSRS. J. AND R. BAERT AND L. HELGASON. IN HIS LETTER, SHERMAN ALLEGED THAT BAERT HAD VIOLATED ITS COLLECTIVE AGREEMENT WITH LOCAL 1669 BY SUBCONTRACTING WORK TO A CONTRACTOR WHO DID NOT USE MEMBERS OF THE UNION.

9. BY LETTER DATED FEBRUARY 11, 1971 ADDRESSED TO LOCAL 1669, E. A. KURBIS, VICE-PRESIDENT, FINANCE AND ADMINISTRATION, REPLIED TO SHERMAN'S LETTER. THE BODY OF KURBIS' LETTER READS:

RECEIPT OF YOUR LETTER DATED DECEMBER 21ST, 1970
IS ACKNOWLEDGED.

WE CAN UNDERSTAND THAT IF WINNITوبا CONSTRUCTION
COMPANY DID IN FACT VIOLATE CERTAIN PREDETERMINED

TERMS AND CONDITIONS OF YOUR LOCAL UNION THEN YOUR LOCAL REPRESENTATIVE, MR. W. SHERMAN, HAD REASONS TO BE ANGRY WITH THAT COMPANY.

HOWEVER MR. SHERMAN SHOULD HAVE BEEN MUCH MORE CAREFUL IN MAKING THE ACCUSATIONS CONTAINED IN YOUR LETTER AND HE SHOULD HAVE FULLY COMPLETED HIS RESEARCH AND GOT HIS FACTS STRAIGHT PRIOR TO FINDING OUR COMPANY GUILTY IN BEING A PARTY VIOLATING THE TERMS AND CONDITIONS OF THE SHORT FORM AGREEMENT THAT WE WINTERED INTO WITH YOUR LOCAL UNION DATED SEPTEMBER 1ST, 1970.

WE HAD NO RECORD OF EMPLOYING A FIRM BY THE NAME OF WINNITوبا CONSTRUCTION COMPANY ON THE BANK OF NOVA SCOTIA KENORA PROJECT AND FURTHER HAVE NO KNOWLEDGE AS TO WHAT TYPE OF WORK THEY WERE DOING ON THE PROJECT OR BY WHOM THEY WERE EMPLOYED. WE LOOKED INTO THIS MATTER FOR SOME CONSIDERABLE LENGTH OF TIME TO MAKE SURE THAT WE HAD OUR FACTS STRAIGHT, AND THAT IS WHY WE HAVE NOT REPLIED TO YOUR LETTER AT AN EARLIER DATE.

IN THE SECOND LAST PARAGRAPH OF MR. SHERMAN'S LETTER HE SUGGESTS THAT WE MEET WITH REPRESENTATIVES OF THE UNION AT 10:00 A.M. ON DECEMBER 23RD, 1970. IT WAS OBVIOUSLY IMPOSSIBLE FOR US TO BE PRESENT AT THAT MEETING SINCE WE HAVE IN OUR FILES THE ENVELOPE IN WHICH MR. SHERMAN'S LETTER WAS MAILED AND THIS ENVELOPE BEARS A POST MARK BY THE KENORA POST OFFICE DATED THE 28TH OF DECEMBER 1970 AND THE LETTER WAS NOT RECEIVED BY US UNTIL DECEMBER 30TH, 1970.

IN VIEW OF THE FOREGOING, NOT ONLY DO WE DENY ANY AND ALL LIABILITY RAISED BY MR. SHERMAN'S LETTER OF DECEMBER 21ST, 1970 BUT WE FEEL THAT WE ARE WITHIN OUR RIGHTS TO REQUEST THAT A LETTER OF APOLOGY BE SENT OUR FIRM AS SOON AS POSSIBLE SO THAT OUR FIRM MAY HAVE THE GOOD REPUTATION WITH YOUR UNION THAT IT HAS ALWAYS ENJOYED IN THE PAST.

KURBIS TESTIFIED THAT HE WAS FIRST AWARE OF THE SHORT FORM OF AGREEMENT DATED SEPTEMBER 1, 1970 SIGNED BY MILLER AND SHERMAN AROUND THE BEGINNING OF FEBRUARY 1971, PRIOR TO REPLYING TO SHERMAN'S LETTER OF DECEMBER 21, 1970.

10. ROBERT BAERT, THE PRESIDENT AND GENERAL MANAGER OF BAERT

CONSTRUCTION, TESTIFIED THAT HE WAS RESPONSIBLE FOR LABOUR RELATIONS MATTERS AND THAT NEITHER MILLER NOR HELGASON HAD ANY AUTHORITY TO SIGN COLLECTIVE AGREEMENTS ON BEHALF OF THE COMPANY. ROBERT BAERT'S EVIDENCE IS THAT HE DID NOT RECALL HAVING ANY MEETING WITH SHERMAN AND THAT HE DID NOT DIRECT EITHER HELGASON OR MILLER TO SIGN THE SEPTEMBER 1, 1970 SHORT FORMS OF AGREEMENT. ROBERT BAERT FURTHER TESTIFIED THAT THE OFFICE OF HIS FATHER JULES BAERT, WHO IS CHAIRMAN OF THE BOARD OF BAERT CONSTRUCTION, IS NOT LOCATED IN THE COMPANY PREMISES IN ST. BONIFACE.

11. THERE ARE CONFLICTS OF SUBSTANCE BETWEEN THE EVIDENCE OF SHERMAN AND MILLER AS TO THE CIRCUMSTANCES SURROUNDING THE EXECUTION OF THE SEPTEMBER 1, 1970 AGREEMENT. SHERMAN APPEARED TO BE SOMEWHAT UNCERTAIN AS TO THE DATES ON WHICH HE VISITED THE OFFICES OF BAERT BUT WAS DEFINITE IN HIS TESTIMONY THAT HE HAD VISITED THE OFFICES ON TWO SEPARATE OCCASIONS. SHERMAN ALSO DID NOT SEEM ENTIRELY SURE WHETHER HE HAD SEEN ROBERT OR JULES BAERT ON THE FIRST OCCASION BUT THOUGHT THAT HE HAD SPOKEN WITH JULES BAERT. SHERMAN'S UNDISPUTED EVIDENCE IS, HOWEVER, THAT HE HAD A TELEPHONE CONVERSATION WITH HELGASON CONCERNING THE APPLICATION FOR CERTIFICATION MADE BY LOCAL 1669 AND THAT HE HAD SEEN HELGASON ON BOTH OCCASIONS WHEN HE VISITED THE OFFICES OF BAERT. ACCORDING TO SHERMAN, IT WAS HELGASON WHO AUTHORIZED MILLER TO SIGN THE SEPTEMBER 1, 1970 COLLECTIVE AGREEMENT ON BEHALF OF THE COMPANY ON SHERMAN'S SECOND VISIT TO THE BAERT OFFICE.

12. MILLER APPEARED TO HAVE DIFFICULTY RECALLING THE CIRCUMSTANCES UNDER WHICH HE SIGNED THE SEPTEMBER 1, 1970 AGREEMENT. HIS TESTIMONY WAS BOTH VAGUE AND IMPLAUSIBLE. IT DOES NOT SEEM LOGICAL THAT SHERMAN WOULD CONTINUALLY TELEPHONE MILLER WITH A VIEW TO HAVING HIM SIGN THE AGREEMENT ON BEHALF OF BAERT AND ACCORDING TO SHERMAN, AT NO TIME DID HE TELEPHONE MILLER. MILLER WOULD ALSO HAVE US BELIEVE THAT HE DID NOT APPRECIATE THE NATURE OF THE DOCUMENT HE WAS SIGNING AND SIMPLY SIGNED IT TO BE OBLIGING AND TO GET SHERMAN OUT OF HIS OFFICE. IN VIEW OF THE LENGTH OF TIME THAT HE HAD BEEN EMPLOYED BY BAERT, WE FIND IT DIFFICULT TO BELIEVE THAT HE DID NOT KNOW THAT HE WAS SIGNING A COLLECTIVE AGREEMENT NOTWITHSTANDING THAT HIS AREA OF RESPONSIBILITY WITH THE COMPANY DID NOT INCLUDE LABOUR RELATIONS. WE FIND IT EVEN MORE DIFFICULT TO ACCEPT HIS TESTIMONY THAT HE SIGNED THE SEPTEMBER 1, 1970 AGREEMENT SIMPLY TO BE OBLIGING PARTICULARLY HAVING REGARD TO THE FACT THAT HE IS THE PURCHASING AGENT FOR BAERT AND IN THAT CAPACITY HE MUST SIGN CONTRACTS FOR MATERIALS. FINALLY, IN HIS EXAMINATION-IN-CHIEF MILLER TESTIFIED THAT HELGASON WAS NOT PRESENT WHEN SHERMAN CAME TO THE BAERT OFFICE WITH THE AGREEMENTS BUT IN CROSS-EXAMINATION HE SEEMED MORE THAN READY TO ADMIT THAT HELGASON MAY HAVE BEEN PRESENT.

13. ASSESSING MILLER'S EVIDENCE IN ITS TOTALITY, WE ARE ABLE TO PLACE BUT LITTLE RELIANCE UPON IT. AS BETWEEN THE TESTIMONY OF

SHERMAN AND MILLER, WE PREFER AND ACCEPT THE EVIDENCE OF SHERMAN OVER THAT OF MILLER. IN THE RESULT, WE FIND THAT HELGASON HELD MILLER OUT TO SHERMAN AS HAVING THE AUTHORITY TO SIGN THE SEPTEMBER 1, 1970 SHORT FORMS OF COLLECTIVE AGREEMENT. HELGASON, FOR HIS PART, IS A MEMBER OF MANAGEMENT OF BAERT AND THIS FACT WAS KNOWN TO SHERMAN.

14. IN LIGHT OF THE EVIDENCE THAT MILLER WAS HELD OUT TO SHERMAN BY A MEMBER OF MANAGEMENT OF THE COMPANY AS HAVING THE AUTHORITY TO EXECUTE THE SHORT FORMS OF COLLECTIVE AGREEMENT DATED SEPTEMBER 1, 1970 ON BEHALF OF BAERT, THE BOARD FINDS THAT BAERT IS A PARTY TO AND BOUND BY THE SAID AGREEMENT. AS HAS BEEN STATED EARLIER IN THIS DECISION, THE SEPTEMBER 1, 1970 COLLECTIVE AGREEMENT INCORPORATES BY REFERENCE THE CURRENT COLLECTIVE AGREEMENT BETWEEN LOCAL 1669 AND THE CONSTRUCTION ASSOCIATION OF THUNDER BAY INCORPORATED. THE LATTER COLLECTIVE AGREEMENT REMAINS IN EFFECT UNTIL APRIL 30, 1973.

15. ACCORDINGLY, OUR ANSWER TO THE QUESTION REFERRED TO THE BOARD BY THE MINISTER IS THAT THERE IS A COLLECTIVE AGREEMENT BETWEEN THE EMPLOYER AND THE TRADE UNION.

1236-71-R: JOHN RICHMOND (APPLICANT) V. UNITED STEELWORKERS OF AMERICA (RESPONDENT) V. BELLOWS-VALVAIR, LTD. (INTERVENER).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: JOHN RICHMOND FOR THE APPLICANT, D. M. STOREY AND D. HART FOR THE RESPONDENT, DOUGLAS H. CARRUTHERS, Q.C., AND DONALD B. GUY FOR THE INTERVENER.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER O. HODGES: DECEMBER 3, 1971.

1. THE NAME "UNITED STEEL WORKERS OF AMERICA" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "UNITED STEELWORKERS OF AMERICA".

2. THIS IS AN APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT MADE PURSUANT TO THE PROVISIONS OF SECTION 49(2) OF THE ACT.

3. HAVING REGARD TO THE CIRCUMSTANCES SURROUNDING THE MANNER IN WHICH THE SIGNATURES WERE OBTAINED ON THE DOCUMENT FILED IN SUPPORT OF THIS APPLICATION AND IN PARTICULAR THE FACT THAT THE EMPLOYEES WERE ADVISED THAT THE GENERAL MANAGER GAVE THEM PERMISSION TO LEAVE THEIR WORK STATIONS AND ATTEND AT THE OFFICE OF THE OWNER OF THE BUSINESS IN THE

PLANT ADJACENT TO THE INTERVENER'S PLANT, WE FIND THAT SUCH EMPLOYER ASSISTANCE WOULD TEND TO UNDULY INFLUENCE THE EMPLOYEES. WE ARE ACCORDINGLY NOT PREPARED TO FIND THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT REPRESENTED BY THE RESPONDENT VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISHED TO BE REPRESENTED BY THE RESPONDENT.

4. THIS APPLICATION IS ACCORDINGLY DISMISSED.

DECISION OF BOARD MEMBER H. F. IRWIN: DECEMBER 3, 1971.

THE APPLICANT, JOHN RICHMOND, IS A SENIOR ASSEMBLER WHO HAS BEEN IN THE EMPLOY OF THE INTERVENER FOR A NUMBER OF YEARS. HE IS INCLUDED IN THE BARGAINING UNIT DEFINED IN THE RECOGNITION PROVISION OF THE COLLECTIVE AGREEMENT IN EFFECT AS OF THE DATE OF THIS APPLICATION BETWEEN THE RESPONDENT TRADE UNION AND THE INTERVENER EMPLOYER.

MR. RICHMOND GAVE HIS EVIDENCE UNDER OATH IN A STRAIGHTFORWARD AND CANDID MANNER. HE INFORMED THE BOARD CONCERNING THE ORIGATION, PREPARATION AND CIRCULATION OF THE DOCUMENT FILED IN SUPPORT OF THIS APPLICATION FOR THE TERMINATION OF BARGAINING RIGHTS PRESENTLY HELD BY THE RESPONDENT. THERE ARE SIXTEEN EMPLOYEES IN THE BARGAINING UNIT AND EIGHT OR 50% OF THESE EMPLOYEES SIGNED THE DOCUMENT WHICH STATED THAT "WE THE UNDERSIGNED DO NOT WISH TO PARTICIPATE IN THE UNITED STEELS WORKERS OF AMERICA, OR TO HAVE THEM AS BARGAINING AGENTS FOR THE EMPLOYEES OF BELLOWES-VALVAIR LTD."

UNDER THE PROVISIONS OF SECTION 49(3) OF THE ACT, THE BOARD IS DIRECTED TO ASCERTAIN WHETHER NOT LESS THAN 50% OF THE EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE HAVE VOLUNTARILY SIGNIFIED IN WRITING AT SUCH TIME AS DETERMINED BY THE BOARD THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE TRADE UNION. IF NOT LESS THAN 50 PER CENT HAVE SO SIGNIFIED, THE BOARD SHALL, BY A REPRESENTATION VOTE, SATISFY ITSELF THAT A MAJORITY OF THE EMPLOYEES DESIRE THAT THE RIGHT OF THE TRADE UNION TO BARGAIN ON THEIR BEHALF BE TERMINATED.

IN THE INSTANT CASE, NOT LESS THAN 50 PER CENT OF THE EMPLOYEES HAVE SO SIGNIFIED IN WRITING. THE ONLY ISSUE BEFORE THE BOARD, THEREFORE, IS WHETHER OR NOT THE SIGNIFICATIONS REPRESENT THE VOLUNTARY WISHES OF THE EMPLOYEES WHO SIGNED THE DOCUMENT IN SUPPORT OF THE APPLICATION.

THE MAJORITY DECISION STATES AT PARAGRAPH 3 THAT THE BOARD IS NOT PREPARED TO FIND THE EIGHT EMPLOYEES WHO SIGNED THE DOCUMENT DID SO VOLUNTARILY IN AS MUCH AS THE EMPLOYEES WERE ADVISED THAT THE GENERAL MANAGER GAVE THEM PERMISSION TO LEAVE THEIR WORK STATIONS AND ATTEND AT THE OFFICE OF THE OWNER OF THE BUSINESS IN THE PLANT ADJACENT TO THE INTERVENER'S PLANT AND THAT SUCH EMPLOYER ASSISTANCE WOULD TEND TO UNDULY

INFLUENCE THE EMPLOYEES.

WITH RESPECT, I CONSIDER THIS AN UNWARRANTED PRESUMPTION AND I AM UNABLE TO ACCEPT SUCH A FINDING. THERE IS NOT A SHRED OF EVIDENCE THAT THE INTERVENER EMPLOYER HAS SOUGHT IN ANY WAY TO INFLUENCE THE EMPLOYEES TO SIGN OR NOT TO SIGN THE DOCUMENT. IT WAS LEFT TO EACH EMPLOYEE'S OWN PERSONAL ELECTION WHETHER OR NOT HE WENT NEXT DOOR TO SIGN THE DOCUMENT. MOREOVER, IT IS SIGNIFICANT THAT ONLY EIGHT EMPLOYEES DID SO AND THE OTHER EIGHT EMPLOYEES DID NOT EXERCISE THE PERMISSION GIVEN THEM TO GO NEXT DOOR TO SIGN. THERE IS NO EVIDENCE OR EVEN AN ALLEGATION THAT THERE WAS ANY RELATIONSHIP OR COMMUNICATION BETWEEN THE INTERVENER EMPLOYER AND THE OWNER OF THE ADJACENT PLANT WHO HAS BEEN A CASUAL ACQUAINTANCE OF MR. RICHMOND AND HAD AT RICHMOND'S REQUEST AGREED TO WITNESS THE SIGNING OF THE DOCUMENT BY THE EMPLOYEES OF THE INTERVENER. THIS WAS THE PURPOSE OF THE EMPLOYEES GOING TO THE PLANT NEXT DOOR. THE OTHER EIGHT EMPLOYEES OF THE INTERVENER MADE NO REQUEST TO MANAGEMENT FOR TIME OFF TO SIGN ANY DOCUMENT THAT WAS IN OPPOSITION TO THIS APPLICATION OR TO HOLD A MEETING DURING WORKING HOURS. HAD THEY DONE SO, AND SUCH A REQUEST WAS REFUSED, I WOULD HAVE NO HESITATION IN FINDING THAT THE MANAGEMENT HAD SHOWN THAT THEY FAVOURED THE BARGAINING RIGHTS OF THE RESPONDENT UNION TO BE TERMINATED AND I WOULD HAVE DISMISSED THE APPLICATION.

HAVING REGARD TO ALL THE ABOVE CIRCUMSTANCES OF THIS CASE, I WOULD HAVE DIRECTED A REPRESENTATION VOTE. THE EMPLOYEES WOULD BE ASKED IF THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE RESPONDENT UNION.

959-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. THE VALLEY CITY MANUFACTURING COMPANY LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG AND T. G. HARKNESS FOR THE APPLICANT, C. G. RIGGS, A. C. LAWSON, T. W. WILSON AND J. CSERMAK FOR THE RESPONDENT.

DECISION OF THE BOARD:

DECEMBER 3, 1971.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE BOARD DIRECTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN. THE VOTE WAS CONDUCTED ON WEDNESDAY, OCTOBER 6, 1971 BETWEEN THE HOURS OF 9:30 A.M. AND 11:00 A.M. ON THE TAKING OF THE VOTE MORE THAN FIFTY PER CENT OF THE BALLOTS CAST WERE CAST IN FAVOUR OF THE APPLICANT.

2. FOLLOWING THE TAKING OF THE VOTE, THE RESPONDENT MADE CERTAIN ALLEGATIONS AGAINST THE APPLICANT CONCERNING THE CONDUCT OF THE VOTE. IT

WAS THE RESPONDENT'S POSITION THAT THE ACTIVITIES COMPLAINED OF PREVENTED THE EMPLOYEES FROM INDICATING THEIR TRUE WISHES ON THE BALLOT AND THE RESPONDENT ACCORDINGLY REQUESTED THAT A NEW REPRESENTATION VOTE BE DIRECTED BY THE BOARD.

3. THE RESPONDENT'S FIRST OBJECTION CONCERNED THE FACT THAT T. G. HARKNESS, AN INTERNATIONAL REPRESENTATIVE OF THE APPLICANT, WAS SEEN INSIDE THE DOOR OF THE RESPONDENT'S SHIPPING ROOM AT 10:40 A.M. ON THE DATE THE VOTE WAS TAKEN AND THAT HE WAS IN A POSITION WHERE HE COULD BE SEEN BY VOTERS WHEN THEY APPROACHED THE PLACE WHERE THE VOTE WAS BEING CONDUCTED. THE RESPONDENT'S SUPERVISOR SPOKE TO MR. HARKNESS ABOUT HIS SMOKING IN THAT AREA BUT DID NOT ASK HIM TO LEAVE THE PREMISES.

4. MR. HARKNESS TESTIFIED THAT HE HAD ATTENDED AT THE RESPONDENT'S PREMISES FOR THE VOTE COUNT ON OCTOBER 6 AND HAD ARRIVED EARLY IN THE HOPE THAT THE VOTING WOULD BE COMPLETED AND THAT THE VOTE COUNT COULD PROCEED IMMEDIATELY ON HIS ARRIVAL. HOWEVER, THE RETURNING OFFICER INFORMED ME THAT THERE WERE EMPLOYEES WHO HAD NOT AS YET CAST THEIR BALLOTS AND THAT MR. HARKNESS SHOULD WAIT OUTSIDE THE PREMISES UNTIL THE VOTE WAS COMPLETED. MR. HARKNESS LEFT THE PREMISES AND RETURNED SHORTLY AFTER 11:00 A.M. FOR THE VOTE COUNT. DURING THE FOUR OR FIVE MINUTES THAT MR. HARKNESS WAS ON THE PREMISES WHILE THE VOTE WAS BEING CONDUCTED, HE SAW THE BACKS OF TWO EMPLOYEES NEAR THE VOTING BOOTH BUT HE WAS UNABLE TO IDENTIFY THEM. APPARENTLY THEY DID NOT SEE HIM AND HE DID NOT SPEAK TO THEM. WHILE ON THE PREMISES THE ONLY PERSONS MR. HARKNESS SPOKE TO WERE THE RETURNING OFFICER AND THE RESPONDENT'S SUPERVISOR.

5. HAVING CONSIDERED ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE PRESENCE OF MR. HARKNESS WHILE THE VOTE WAS BEING CONDUCTED, WE ARE SATISFIED THAT MR. HARKNESS DID NOT ATTEMPT TO INTERFERE WITH THE CONDUCT OF THE VOTE AND HIS PRESENCE IN NO WAY INFLUENCED ANY OF THE VOTERS OR PREVENTED THEM FROM INDICATING THEIR TRUE WISHES ON THE BALLOTS CAST BY THEM.

6. THE RESPONDENT'S SECOND OBJECTION WAS BASED ON A PAMPHLET DATED OCTOBER 1, 1971 WHICH WAS DISTRIBUTED BY THE APPLICANT UNION TO THE RESPONDENT'S EMPLOYEES IMMEDIATELY PRIOR TO THE ONSET OF THE "QUIET PERIOD" WHICH PRECEDED THE VOTE. THE PAMPHLET IN QUESTION READS AS FOLLOWS:

TO ALL VALLEY CITY EMPLOYEES

DEAR FRIENDS:

WITHIN THE NEXT FEW WEEKS THIS LOCAL UNION WILL BE MEETING WITH SOME TWENTY (20) COMPANIES IN THE TORONTO AREA WHO DO A SIMILAR TYPE OF WORK AS YOUR COMPANY. THE PURPOSE OF SUCH MEETINGS IS TO NEGOTIATE A NEW CONTRACT. OUR CURRENT

CONTRACT WHICH EXPIRES ON DECEMBER 31ST THIS YEAR GAVE US .85¢ PER HOUR INCREASE OVER THE LAST TWO YEARS. WE KNOW WE WILL IMPROVE ON THAT THIS YEAR, AND WE WOULD LIKE TO BE IN A POSITION TO HAVE YOUR COMPANY SIGN THE SAME CONTRACT.

THERE IS NO VALID REASON WHY ALL COMPANIES IN THE FURNITURE INDUSTRY SHOULD NOT BE UNDER THE SAME CONTRACT. YOUR OWN GENERAL MANAGER, MR. LAWSON, HAS REQUESTED A STANDARD TYPE AGREEMENT. WE ARE PREPARED TO ASSIST HIM IN THIS REGARD, BUT WE DO NEED YOUR SUPPORT.

WHEN YOU CAST YOUR VOTE ON OCTOBER 6TH, 1971, WE SINCERELY URGE YOU TO VOTE FOR THE UNION.

WHY SHOULD WE, AS SKILLED CRAFTSMEN, BE SO LOW PAID? WHO IS TO BLAME FOR THIS CONDITION? WE ARE... BECAUSE WE ARE NOT UNITED.

HELP US TO HELP YOU BY VOTING "YES" ON OCTOBER 6TH, 1971.

THANKING YOU FOR YOUR SUPPORT, I AM,

SINCERELY YOURS,
"R. BRANDT/MB"
RUDY BRANDT,
BUSINESS REPRESENTATIVE,
LOCAL UNION 2679.

7. THE UNION PAMPHLET SET OUT ABOVE FOLLOWED A LETTER SENT BY THE RESPONDENT TO ALL EMPLOYEES ON SEPTEMBER 29, 1971, WHICH READS AS FOLLOWS:

TO ALL EMPLOYEES:

THE GOVERNMENT-SUPERVISED VOTE CONCERNING THE INTERNATIONAL UNION APPLICATION FOR YOUR BARGAINING RIGHTS WILL BE HELD WEDNESDAY, OCT. 6, 1971.

THIS IS A SERIOUS MATTER AND DESERVES YOUR CAREFUL CONSIDERATION. IF WE WERE IN YOUR POSITION, THERE WOULD BE SEVERAL MATTERS WITH WHICH WE WOULD BE CONCERNED:

WHAT DO YOU KNOW OF THE UNION POLICIES?

WHAT RIGHTS WOULD YOU HAVE IN DECIDING UNION POLICIES?

WHAT DOES THE UNION CONSTITUTION SAY? HAVE YOU BEEN SHOWN ONE?

WHAT ARE THE MONTHLY DUES, WHERE DOES THE MONEY GO AND WHO DECIDES WHEN THE DUES SHOULD BE INCREASED?

WILL THE NECESSARY SHOP STEWARDS SELECTED FROM AMONG THE PRESENT EMPLOYEES SERVE YOU ANY DIFFERENTLY THAN THE COMMITTEE YOU NOW HAVE?

DOES THE UNION STILL SEEK TO ABOLISH THE PRESENT PROFIT SHARING PLAN?

IF YOU GET SATISFACTORY ANSWERS TO THESE QUESTIONS, YOUR DECISION SHOULD STILL DEPEND ON YOUR TREATMENT AT VALLEY CITY AS A PLACE TO WORK COMPARED WITH OTHER PLACES YOU HAVE WORKED.

WE HAVE REVIEWED YOUR WAGES AND OTHER WORKING CONDITIONS EACH YEAR SO THAT THEY ARE COMPARABLE WITH, IF NOT BETTER THAN, THOSE PAID IN OTHER UNIONIZED WOODWORK SHOPS. SO THAT YOU COULD COMPARE, WE PLACED ON THE BULLETIN BOARDS THE CONTRACTS THE UNION NEGOTIATED WITH OUR MAJOR COMPETITION. WE ARE SURE YOU WILL AGREE THAT, EVEN WITHOUT CONSIDERING THE PROFIT SHARING PLAN, OUR TOTAL BENEFITS COMPARE FAVOURABLY.

IS THE PRESENCE OF AN OUTSIDE UNION, LED BY PEOPLE UNFAMILIAR WITH THIS OPERATION, GOING TO MAKE THIS A BETTER PLACE TO WORK?

YOU SHOULD REALIZE YOUR DECISION WILL BE FINAL. YOU CANNOT CHANGE YOUR MIND IN SIX WEEKS OR SIX MONTHS LATER. THE LAW SAYS EMPLOYEES MUST WAIT UNTIL THE LAST TWO MONTHS OF ANY AGREEMENT OR UNTIL SIX MONTHS AFTER A STRIKE STARTS BEFORE THEY CAN THROW A UNION OUT.

SO, YOUR DECISION IS IMPORTANT.

8. THE RESPONDENT OBJECTED TO THE STATEMENT APPEARING IN THE SECOND PARAGRAPH OF THE UNION'S PAMPHLET WHICH READS "YOUR OWN

GENERAL MANAGER, MR. LAWSON, HAS REQUESTED A STANDARD TYPE AGREEMENT". MR. LAWSON TESTIFIED THAT NO SUCH REQUEST WAS MADE BY HIM. IT WAS THE RESPONDENT'S POSITION THAT THE EMPLOYEES WOULD BE MISLED BY THE STATEMENT AND THE STATEMENT WOULD TEND TO CAUSE THE EMPLOYEES TO ASSUME THAT THE COMPANY AND THE UNION HAD REACHED AN AGREEMENT WHICH THE EMPLOYEES WERE MERELY BEING ASKED TO RATIFY IN THE REPRESENTATION VOTE. THE RESPONDENT ARGUED THAT THIS STATEMENT WOULD CONFUSE THE EMPLOYEES AS TO THE REAL ISSUE BEING VOTED ON AND WOULD TEND TO PREVENT THEM FROM EXPRESSING THEIR TRUE WISHES AS TO WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE APPLICANT.

9. MR. HARKNESS TESTIFIED THAT THIS STATEMENT IN THE PAMPHLET WAS BASED ON A SETTLEMENT MADE BY MR. LAWSON DURING A MEETING BETWEEN MR. HARKNESS AND MR. LAWSON. MR. HARKNESS HAD PREVIOUSLY MET WITH MR. LAWSON IN AN ATTEMPT TO OBTAIN VOLUNTARY RECOGNITION OF THE UNION. DURING THEIR MEETING MR. LAWSON HAD COMMENTED ON THE FACT THAT HIS MAJOR COMPETITORS, SOME OF WHOM WERE PARTIES TO COLLECTIVE AGREEMENTS WITH THE APPLICANT, PAID LOWER WAGE RATES THAN THE RESPONDENT AND THIS PLACED THE RESPONDENT AT A COMPETITIVE DISADVANTAGE. DURING CROSS-EXAMINATION AT THE HEARING, MR. LAWSON AGREED THAT HE HAD STATED TO MR. HARKNESS THAT "IF EVERY COMPANY PAID THE SAME WAGE RATES IT WOULD NOT BE NECESSARY FOR THE COMPANIES TO COMPETE ON WAGES". MR. HARKNESS DREW THE INFERENCE FROM THE STATEMENTS MADE BY MR. LAWSON THAT MR. LAWSON WAS THEREFORE IN FAVOUR OF A STANDARD TYPE AGREEMENT.

10. WHILE THE STATEMENT IN THE UNION PAMPHLET APPEARS TO BE A VERY EXTRAVAGANT EXPRESSION OF THE INFERENCE DRAWN BY MR. HARKNESS, WE ARE OF THE VIEW THAT WHEN THE STATEMENT IS PROPERLY CONSIDERED IN THE CONTEXT IN WHICH IT WAS MADE, THE EMPLOYEES WOULD RECOGNIZE THE STATEMENT FOR WHAT IT WAS -- ELECTIONEERING PROPAGANDA.

11. APART FROM THE PENULTIMATE PARAGRAPH OF THE RESPONDENT'S LETTER WHICH DOES NOT FULLY SET OUT THE RIGHTS OF THE EMPLOYEES TO TERMINATE THE BARGAINING RIGHTS OF THE UNION, NO OBJECTION CAN PROPERLY BE TAKEN TO THE CONTENTS OF THE RESPONDENT'S LETTER. HOWEVER, THE RESPONDENT'S LETTER WOULD MAKE IT VERY CLEAR TO THE EMPLOYEES THAT THE RESPONDENT WAS NOT IN FAVOUR OF THEIR BEING REPRESENTED BY THE APPLICANT UNION. THE RESPONDENT EVEN POSTED COPIES OF COLLECTIVE AGREEMENTS THAT THE APPLICANT HAD NEGOTIATED WITH OTHER COMPANIES IN ORDER TO TRY TO DEMONSTRATE THAT THE EMPLOYEES HAD NOTHING TO GAIN BY VOTING FOR THE APPLICANT. AGAIN, THE LAST SENTENCE OF THE FIRST PARAGRAPH OF THE APPLICANT'S PAMPHLET MAKES IT CLEAR THAT THE APPLICANT HAD NOT FINALIZED THE MONETRAY TERMS OF THE AGREEMENT WHICH IT HOPED TO SIGN WITH THE COMPANY.

12. WHEN THE DISPUTED STATEMENT IS CONSIDERED IN THE LIGHT OF THESE FACTS, WE ARE OF THE VIEW THAT THE STATEMENT WOULD NOT MISLEAD

OR CONFUSE THE EMPLOYEES IN ANY MEANINGFUL WAY.

13. WE ARE ACCORDINGLY SATISFIED THAT THE APPLICANT'S PAMPHLET ON OCTOBER 1, 1971 DID NOT IMPEDE THE ABILITY OF THE EMPLOYEES OF EXPRESS THEIR TRUE WISHES NOR DID THE PAMPHLET OTHERWISE DESTROY THE EVIDENTIARY VALUE OF THE REPRESENTATION VOTE TAKEN IN THIS MATTER.

. . .

19. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

. . .

1046-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. UNITED STEELWORKERS OF AMERICA (RESPONDENT) V. DELLELCE CONSTRUCTION AND EQUIPMENT (INTERVENER).

BEFORE: FRANK V. BOSCARIOL, VICE CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: R. KOSKIE, A. MINSKY AND R. BRADY FOR THE APPLICANT; ALICK RYDER, CHRIS PALIARE AND A. DESBIENS FOR THE RESPONDENT; HUGH A. DOIG, Q.C., FOR THE INTERVENER.

DECISION OF THE BOARD: DECEMBER 6, 1971.

1. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FINDS THAT DELL CONSTRUCTION (SUDBURY) IS NOT A PARTY TO THESE PROCEEDINGS. ACCORDINGLY, THE NAME "DELL CONSTRUCTION (SUDBURY)" DESIGNATED AS "INTERVENER #2" IN THESE PROCEEDINGS IS DELETED FROM THE STYLE OF CAUSE AND THE DESIGNATION OF DELLELCE CONSTRUCTION AND EQUIPMENT AS "INTERVENER #1" APPEARING IN THE STYLE OF CAUSE IS AMENDED TO READ "INTERVENER."

2. THIS IS AN APPLICATION FOR TERMINATION OF BARGAINING RIGHTS MADE UNDER SECTION 52 [FORMERLY SECTION 45A] OF THE LABOUR RELATIONS ACT.

3. AT THE HEARING OF THIS MATTER COMMENCING ON NOVEMBER 5, 1971, THERE WAS FILED WITH THE BOARD A COPY OF A VOLUNTARY RECOGNITION AGREEMENT (EXHIBIT #1) DATED JUNE 1, 1970, ENTERED INTO BETWEEN ALBERT DESBIENS ON BEHALF OF THE RESPONDENT, AND B. MIHELCHIC ON BEHALF OF N. DELLELCE, THE OWNER AND MANAGER OF THE INTERVENER, WHEREIN THE RESPONDENT WAS RECOGNIZED AS THE SOLE BARGAINING AGENT FOR ALL EMPLOYEES OF THE INTERVENER IN THE SUDBURY DISTRICT, SUBJECT TO CERTAIN EXCLUSIONS NOT HERE MATERIAL TOGETHER WITH THE SPECIFIC EXCLUSION OF "EMPLOYEES UNDER CONTRACT WITH THE HOISTING ENGINEERS." THIS LATTER CONTRACT WAS

FILED IN THESE PROCEEDINGS AS EXHIBIT #3. ALSO ON FILE AND MARKED AS EXHIBIT #2 IS A COPY OF A COLLECTIVE AGREEMENT, EFFECTIVE JULY 1, 1971, AND EXECUTED BETWEEN ALBERT DESBIENS AND B. MIHELCHIE IN THEIR RESPECTIVE CAPACITIES ON JULY 12, 1971, WHEREIN THE RESPONDENT WAS GIVEN, SUBJECT TO CERTAIN EXCLUSIONS NOT HERE MATERIAL, BARGAINING RIGHTS FOR ALL OF THE EMPLOYEES OF THE INTERVENER. THE BOARD NOTES THAT THE HOISTING ENGINEERS ARE NOT SPECIFICALLY EXCLUDED FROM THIS AGREEMENT.

4. AT THE OUTSET OF THESE PROCEEDINGS, THE RESPONDENT TOOK THE POSITION THAT THIS APPLICATION IS UNTIMELY ON THE BASIS THAT SINCE ONE YEAR HAS ELAPSED FROM THE DATE OF THE VOLUNTARY RECOGNITION AGREEMENT WITHOUT SUCH DOCUMENT BEING CHALLENGED, THE BARGAINING RIGHTS FLOWING THEREFROM CANNOT NOW BE ATTACKED. THE APPLICANT, ON THE OTHER HAND, MAINTAINS THAT IT IS THE COLLECTIVE AGREEMENT (EXHIBIT #2) WHICH IS BEING ATTACKED, AND SINCE THIS IS A FIRST COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER, THE APPLICATION IS TIMELY SINCE IT WAS FILED DURING THE FIRST YEAR OF ITS OPERATION, PURSUANT TO SECTION 52(1) OF THE ACT.

5. HAVING REGARD TO THE FACT THAT THE VOLUNTARY RECOGNITION AGREEMENT SPECIFICALLY EXCLUDES THE HOISTING ENGINEERS, WE FAIL TO SEE HOW THE APPLICANT HEREIN COULD HAVE CHALLENGED THIS DOCUMENT WITHIN THE ONE YEAR PERIOD FOLLOWING ITS EXECUTION, SINCE ITS BARGAINING RIGHTS WERE NEVER IN DISPUTE AT THIS TIME. IN OUR OPINION, THE ONLY POINT AT WHICH THESE BARGAINING RIGHTS ARE PUT IN QUESTION, OCCURS ON JULY 1, 1971, WHEN EXHIBIT #2 PURPORTS TO COVER AN ALL EMPLOYEE UNIT OF THE INTERVENER. IN VIEW OF THE FACT THAT THIS APPLICATION WAS FILED WITHIN THE FIRST YEAR OF THE OPERATION OF THIS COLLECTIVE AGREEMENT, WE THEREFORE FIND THAT IT IS TIMELY PURSUANT TO THE PROVISIONS OF SECTION 52 (1) OF THE ACT.

6. THE RESPONDENT ALSO CHALLENGED THE STATUS OF THE APPLICANT TO INITIATE PROCEEDINGS IN THIS MATTER. IN THIS REGARD, THE REVISED LISTS OF EMPLOYEES FILED BY THE INTERVENER DISCLOSES THAT A TOTAL OF 98 NAMES ARE INCLUDED IN THE BARGAINING UNIT DEFINED IN EXHIBIT #2, AS OF SEPTEMBER 28, 1971. OF THE 18 "PROOF OF MEMBERSHIP" DOCUMENTS FILED BY THE APPLICANT, 5 OF THE NAMES THEREIN CORRESPOND TO THE NAMES SUBMITTED BY THE INTERVENER. HAVING REGARD TO THIS EVIDENCE OF MEMBERSHIP, WHICH IN EACH CASE SPECIFICALLY AUTHORIZES THE APPLICANT TO REPRESENT THE MEMBER, WE ARE SATISFIED THAT THE APPLICANT HAS SUBMITTED SUFFICIENT EVIDENCE OF REPRESENTATION ON BEHALF OF THE FIVE EMPLOYEES IN THE BARGAINING UNIT, SO AS TO WARRANT ITS MAKING THIS APPLICATION AT THIS TIME. (SEE ALSO THE TORONTO PLASTERING COMPANY LIMITED CASE, OLRB DECEMBER 1967, P.878 AND THE CASES REFERRED TO IN PARAGRAPH #1 THEREIN.)

7. HAVING REGARD TO ALL OF THE CIRCUMSTANCES IN THIS CASE, WE

THEREFORE FIND THAT THE PROVISIONS OF SECTION 52(3) ARE APPLICABLE WHEREIN THE ONUS OF ESTABLISHING THAT THE RESPONDENT WAS ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT AT THE TIME EXHIBIT #2 WAS ENTERED INTO, IS PLACED UPON THE PARTIES TO THIS AGREEMENT.

8. THE FIRST WITNESS CALLED BY THE RESPONDENT IN THIS REGARD WAS ALBERT DESBIENS, A STAFF REPRESENTATIVE WITH THE UNITED STEELWORKERS OF AMERICA WHO SERVICED THE SUDBURY AREA FOR APPROXIMATELY TWELVE YEARS. HE STATED THAT HE WAS FIRST APPROACHED BY SOME OF THE INTERVENER'S EMPLOYEES IN 1965 BUT HIS ORGANIZATIONAL EFFORTS DID NOT PROVE FRUITFUL AT THIS TIME. FOLLOWING THE TEAMSTERS'S UNSUCCESSFUL CAMPAIGN, HE WAS AGAIN APPROACHED IN 1968, BUT HIS EFFORTS TO ORGANIZE THE EMPLOYEES AGAIN PROVED TO BE UNSUCCESSFUL. FINALLY, IN EARLY 1970, HE WAS AGAIN APPROACHED BY SOME OF THE EMPLOYEES, AT THE INSTIGATION OF WALTER KOT-LICK, AN OPERATOR EMPLOYED BY THE INTERVENER. AT A MEETING HELD ON MARCH 20, 1970, THE "COMMITTEE" (AN INFORMAL SELF-APPOINTED GROUP OF EMPLOYEES RANGING IN NUMBER FROM FOUR TO NINE) INFORMED DESBIENS THAT BECAUSE OF THE FAILURE OF PREVIOUS CAMPAIGNS, THE EMPLOYEES WERE RELUCTANT TO SIGN MEMBERSHIP CARDS IN THE RESPONDENT AND THAT FURTHER, THEY WERE AFRAID OF LOSING THEIR JOBS IN THE EVENT THE INTERVENER SHOULD FIND OUT ABOUT THIS ACTIVITY. WITH THESE FACTS IN MIND, THE WITNESS DECIDED IT WOULD BE BETTER TO APPROACH THE INTERVENER TO SEEK ITS RECOGNITION OF THE RESPONDENT WITHOUT CERTIFICATION. VARIOUS DISCUSSIONS WITH MANAGEMENT IN THIS REGARD DURING WHICH THE WITNESS INDICATED THAT THE APPLICANT REPRESENTED THE MAJORITY OF THE EMPLOYEES, CULMINATED IN THE EXECUTION OF EXHIBIT #1 ON JUNE 1, 1970. UPON CROSS-EXAMINATION, THE WITNESS STATED THAT HE KNEW OF THE EXISTENCE OF EXHIBIT #3 AT THIS TIME, ALTHOUGH HE HAD NEVER SEEN THE DOCUMENT, AND ALTHOUGH IT WAS HIS INTENTION NOT TO INTERFERE WITH THE BARGAINING RIGHTS OF THE HOISTING ENGINEERS, HE NEVER DID DISCUSS THE MATTER WITH THE APPLICANT. SHORTLY AFTER THE TIME OF SIGNING EXHIBIT #1, THE WITNESS STATED THAT HE PRESENTED THE DOCUMENT TO THE "COMMITTEE" WHO INDICATED THEY WERE HAPPY WITH IT BUT AT NO TIME WERE COPIES DISTRIBUTED TO THE REMAINING EMPLOYEES. THE REASON FOR THIS, ACCORDING TO THE WITNESS WAS THAT THE EMPLOYEES WERE STILL FEARFUL OF THE POSSIBILITY OF RETRIBUTION FROM THEIR EMPLOYER.

9. IN ANY EVENT, NEGOTIATIONS ENSUED SHORTLY THEREAFTER. FOLLOWING EACH MEETING, DESBIENS STATED THAT HE WOULD REPORT BACK TO THE "COMMITTEE" FOR ITS COMMENTS AND AT NO TIME WAS OBJECTION RAISED AS TO HIS BARGAINING AS SOLE NEGOTIATOR ON ITS BEHALF. NEGOTIATIONS WERE SUSPENDED IN SEPTEMBER OF 1970 WHEN THE "COMMITTEE" REPORTED THAT THE TEAMSTERS WERE AGAIN CAMPAIGNING. THIS ACTION ULTIMATELY LED TO AN APPLICATION FOR CERTIFICATION BEFORE THE BOARD, WHICH WAS DISMISSED ON MAY 25, 1971, UPON THE TEAMSTER'S REQUEST TO WITHDRAW (BOARD FILE NO. 381-71-R). IN THE MEANTIME, THE RESPONDENT HAD APPLIED FOR CONCILIATION AND WHICH RESULTED IN A SETTLEMENT IN EARLY JULY OF 1971.

10. UPON CROSS-EXAMINATION, THE WITNESS DID CONCEDE THAT AT THE TIME OF SIGNING EXHIBIT #2 ON JULY 12, 1971, THE EMPLOYEES WERE STILL RELUCTANT TO JOIN THE RESPONDENT AND NO APPLICATION CARDS WERE IN FACT SIGNED AS OF THIS TIME. FURTHER, NO MEETING OF THE EMPLOYEES WAS CALLED PRIOR TO THE EXECUTION OF THIS COLLECTIVE AGREEMENT ALTHOUGH THE WITNESS HAD DISCUSSED IT WITH THE "COMMITTEE" BEFOREHAND. AFTER THE SIGNING OF THIS DOCUMENT, AND SOMETIME BETWEEN JULY 12 AND SEPTEMBER 3, 1971, THE WITNESS TESTIFIED THAT HE GAVE A SUPPLY OF APPLICATION CARDS (ONE OF WHICH IS FILED AS EXHIBIT #8) TO MR. MIHELCHIC, WHO IN TURN SAW TO IT THAT THESE WERE GIVEN TO THE EMPLOYEES. UPON CROSS-EXAMINATION, THE WITNESS DID AGREE THAT MIHELCHIC TOLD SOME OF THE EMPLOYEES THAT IF THEY DID NOT SIGN MEMBERSHIP CARDS IN THE RESPONDENT, THEY WOULD BE OUT OF A JOB. BY LETTER DATED SEPTEMBER 3, 1971, (EXHIBIT #7), THE WITNESS THEN PROCEEDED TO NOTIFY EACH OF THE EMPLOYEES OF A MEETING TO BE HELD ON SEPTEMBER 9, 1971, THE PURPOSES OF WHICH HE STATED WERE TO ELECT AN EXECUTIVE TO GET A CHARTER AND ALSO TO GO THROUGH THE COLLECTIVE AGREEMENT. COPIES OF THE COLLECTIVE AGREEMENT WERE DISTRIBUTED AT THIS MEETING AND A "CLAUSE BY CLAUSE" EXPLANATION WAS GIVEN TO THE 75 EMPLOYEES PRESENT. THE EVIDENCE OF WALTER KOTLICK CORROBORATES MUCH OF THE EVIDENCE OF DESBIENS.

11. HAVING REGARD TO ALL OF THE ABOVE CIRCUMSTANCES, WE FIND THAT THE RESPONDENT, PURSUANT TO SECTION 52(3) OF THE ACT, HAS FAILED TO SATISFY THE ONUS CAST UPON IT, OF ESTABLISHING THAT IT WAS ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT AT THE TIME OF THE EXECUTION OF EXHIBIT #2 ON JULY 12, 1971.

12. THE BOARD THEREFORE, PURSUANT TO SECTION 52(1) OF THE ACT, DECLARES THAT THE RESPONDENT WAS NOT AT THE TIME EXHIBIT #2 WAS ENTERED INTO ON JULY 12, 1971, ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT.

13. THE RESPONDENT FURTHER ARGUED THAT EVEN IF THE BOARD SHOULD FIND THAT THE REPRESENTATION RIGHTS OF THE RESPONDENT UNDER EXHIBIT #2 ARE TERMINATED, NEVERTHELESS THE BARGAINING RIGHTS FLOWING FROM EXHIBIT #1 STILL REMAIN SINCE THIS DOCUMENT WAS NEVER ATTACKED. IN VIEW OF THE FACT THAT THIS VOLUNTARY RECOGNITION DOCUMENT NEVER PURPORTED TO COVER THE BARGAINING RIGHTS OF THE APPLICANT, AS INDICATED IN PARAGRAPH #3 HEREIN, IT IS NOT NECESSARY FOR THE BOARD TO FURTHER DEAL WITH THIS QUESTION.

1244-71-R: AVONDALE DAIRY LIMITED (APPLICANT) V. RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, LOCAL 440, AFL/CIO/CLC (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: H. A. BERESFORD, R. L. RUTTAN AND D. T. MALLOY FOR THE APPLICANT; H. BUCHANAN FOR THE RESPONDENT.

DECISION OF THE BOARD: DECEMBER 7, 1971.

1. THIS IS AN APPLICATION UNDER SECTION 55 OF THE LABOUR RELATIONS ACT.

2. THE FACTS WHICH ARE NOT IN DISPUTE ARE AS FOLLOWS: THE APPLICANT OPERATES DEPOTS IN PORT COLBORNE, WELLAND, DUNVILLE AND FORT ERIE. IT ALSO HAS A PROCESSING PLANT IN ST. CATHARINES. ON JUNE 15, 1971, THE APPLICANT PURCHASED A DEPOT LOCATED AT CRYSTAL BEACH AS A GOING CONCERN, FROM RIDGE DAIRY LIMITED. THE LATTER COMPANY WAS AT THE TIME, PARTY TO A COLLECTIVE AGREEMENT (EXHIBIT #1) ENTERED INTO WITH THE RESPONDENT, WITH A TERM EFFECTIVE FROM AUGUST 9, 1969 UNTIL AUGUST 9, 1971. FORMAL NOTICE TO BARGAIN FOR RENEWAL OF THIS AGREEMENT WAS DELIVERED TO RIDGE DAIRY LIMITED BY THE RESPONDENT ON JULY 5, 1971, WHICH RESULTED IN THREE INITIAL MEETINGS BETWEEN THE PARTIES HEREIN. ON SEPTEMBER 13, 1971, OPERATIONS AT THE FORT ERIE DEPOT WERE DISCONTINUED AND TRANSFERRED TO THE CRYSTAL BEACH DEPOT. THE SEVEN EMPLOYEES FORMERLY EMPLOYED AT THE FORT ERIE DEPOT WERE ALSO TRANSFERRED TO THE CRYSTAL BEACH DEPOT. HAVING REGARD TO ALL OF THE CIRCUMSTANCES, WE ARE SATISFIED THAT THERE HAS BEEN AN INTERMINGLING OF EMPLOYEES AT THE CRYSTAL BEACH DEPOT. ON SEPTEMBER 14, 1971, THE RESPONDENT APPLIED FOR THE APPOINTMENT OF A CONCILIATION OFFICER, NAMING RIDGE DAIRY LIMITED AS THE EMPLOYER. FOLLOWING VARIOUS UNSUCCESSFUL MEETINGS WITH THIS OFFICER, THE PARTIES WERE INFORMED BY LETTER DATED NOVEMBER 24, 1971, THAT NO CONCILIATION BOARD WOULD BE APPOINTED.

3. THE RESPONDENT ARGUES THAT THIS APPLICATION IS UNTIMELY. PURSUANT TO SECTION 55(2), IT IS SUBMITTED THAT THE APPLICANT BECAME BOUND BY THE COLLECTIVE AGREEMENT REFERRED TO ABOVE, ON JUNE 15, 1971. SINCE THIS APPLICATION WAS NOT BROUGHT WITHIN THE 60 DAY PERIOD FOLLOWING THIS DATE, THE RESPONDENT MAINTAINS THAT THE BOARD IS NOW BARRED FROM ENTERTAINING THE APPLICATION TO TERMINATE ITS BARGAINING RIGHTS, ON THE BASIS OF SECTION 55(5) OF THE ACT, WHICH PROVIDES AS FOLLOWS:

"THE BOARD MAY, UPON THE APPLICATION OF ANY PERSON, TRADE UNION OR COUNCIL OF TRADE UNIONS CONCERNED, MADE WITHIN SIXTY DAYS AFTER THE SUCCESSOR EMPLOYER REFERRED TO IN SUBSECTION 2 BECOMES BOUND BY THE COLLECTIVE AGREEMENT, OR WITHIN SIXTY DAYS AFTER THE TRADE UNION OR COUNCIL OF TRADE UNIONS HAS GIVEN A NOTICE UNDER SUBSECTION 3, TERMINATE THE BARGAINING RIGHTS OF THE TRADE UNION OR COUNCIL OF TRADE UNIONS BOUND BY THE

COLLECTIVE AGREEMENT OR THAT HAS GIVEN NOTICE,
 AS THE CASE MAY BE, IF, IN THE OPINION OF THE
BOARD, THE PERSON TO WHOM THE BUSINESS WAS SOLD
HAS CHANGED ITS CHARACTER SO THAT IT IS SUB-
STANTIALLY DIFFERENT FROM THE BUSINESS OF THE
PREDECESSOR EMPLOYER."

(UNDERLINING ADDED)

HAVING REGARD TO THE UNDERLINED WORDS AND TO THE EVIDENCE, WE ARE SATISFIED THAT THIS PRE-CONDITION TO THE OPERATION OF THIS SUBSECTION HAS NOT BEEN MET AND WE THEREFORE FIND THAT SUCH A PROVISION HAS NO APPLICATION TO THE INSTANT SITUATION.

4. THE APPLICANT, ON THE OTHER HAND, BASES ITS APPLICATION UNDER THE PROVISIONS OF SECTION 55(6) OF THE ACT. HAVING REGARD TO ALL OF THE CIRCUMSTANCES, WE FIND THAT ALL OF THE REQUIREMENTS AS THEREIN SET OUT, ARE MET. ALTHOUGH THERE HAS BEEN A THREE MONTH DELAY IN IMPLEMENTING THE TRANSFER OF OPERATIONS TO CRYSTAL BEACH FOLLOWING ITS PURCHASE, WE ARE SATISFIED, HAVING REGARD TO THE EVIDENCE OF ROBERT RUTTAN, THE SECRETARY-TREASURER OF THE APPLICANT, THAT SUCH ACTION WAS PROPERLY PROMPTED BY BONA FIDE ECONOMIC CONSIDERATIONS.

5. HAVING REGARD TO SECTION 55(6)(B), THE BOARD THEREFORE DETERMINES THAT THE EMPLOYEES HERE CONCERNED AT THE CRYSTAL BEACH DEPOT CONSTITUTE ONE APPROPRIATE BARGAINING UNIT, IN A VOTING CONSTITUENCY TO BE FURTHER DETERMINED UPON AGREEMENT OF THE PARTIES.

6. HAVING REGARD TO SECTION 55(8) AND TAKING INTO ACCOUNT ALL OF THE CIRCUMSTANCES HEREIN, WE ARE OF THE OPINION THAT A REPRESENTATION VOTE SHOULD BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT AT THE CRYSTAL BEACH DEPOT IN THE SAID VOTING CONSTITUENCY.

7. ALL EMPLOYEES OF THE RESPONDENT AT THE CRYSTAL BEACH DEPOT IN THE SAID VOTING CONSTITUENCY ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

8. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE RESPONDENT IN THEIR EMPLOYMENT RELATIONS WITH AVONDALE DAIRY LIMITED.

9. THE MATTER IS REFERRED TO THE REGISTRAR.

435-71-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. DELUXE STAIR CUSHION LTD. (RESPONDENT) V. RESILIENT FLOOR WORKERS, UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2965 (INTERVENER).

BEFORE: R.A. FURNESS, VICE CHAIRMAN AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: G. VANDEZANDE, H. ANTONIDES AND E. VANDERKLOET FOR THE APPLICANT; R.D. PERKINS AND HARVEY ROBERT MICHAUD FOR THE RESPONDENT; L. MACLEAN AND H.T. HINTON FOR THE INTERVENER.

DECISION OF VICE-CHAIRMAN R.A. FURNESS AND BOARD MEMBER E. BOYER.
DECEMBER 8, 1971.

1. WE FIND THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.
2. WE FURTHER FIND THAT THE INTERVENER IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.
3. WE FURTHER FIND THAT THE APPLICATION FOR CERTIFICATION BY THE APPLICANT IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 108 OF THE LABOUR RELATIONS ACT.
4. WE FURTHER FIND THAT THE APPLICATION FOR CERTIFICATION BY THE INTERVENER IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 108 OF THE LABOUR RELATIONS ACT.
5. ON THE DATE OF THE MAKING OF THIS APPLICATION THE RESPONDENT HAD IN ITS EMPLOY IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO ONLY EMPLOYEES ENGAGED IN THE INSTALLATION OF CARPETS. HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES AND HAVING FURTHER REGARD TO THE PROVISIONS OF SECTION 6(1) OF THE LABOUR RELATIONS ACT, WE FIND THAT ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN THE INSTALLATION OF CARPETS IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
6. THE APPLICANT FILED ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT AGAINST THE INTERVENER. THE APPLICANT ALLEGED THAT BY VIRTUE OF CERTAIN ALLEGED ACTS WHICH OCCURRED ON MAY 14, AND SUBSEQUENT TO MAY 14, 1971 THE INTERVENER HAD CONTRAVENED CERTAIN SECTIONS OF THE ONTARIO LABOUR RELATIONS ACT.
7. HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES THE BOARD FOUND THAT THE APPLICANT HAD PROVIDED SUFFICIENT PARTICULARS WITH RESPECT TO ITS ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT AGAINST THE INTERVENER ON MAY 14, 1971 BUT RULED THAT WITH RESPECT TO THE ALLEGA-

TIONS OF IMPROPER OR IRREGULAR CONDUCT ALLEGED TO HAVE OCCURRED SUBSEQUENT TO MAY 14, 1971, THE APPLICANT HAD NOT PROVIDED SUFFICIENT PARTICULARS SO THAT THE INTERVENER WAS UNABLE TO PREPARE ITS CASE IN CONNECTION WITH THE EVENTS ALLEGED TO HAVE OCCURRED AFTER MAY 14, 1971. THE BOARD NOTED THAT WITH RESPECT TO THE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT ALLEGED BY THE INTERVENER TO HAVE OCCURRED SUBSEQUENT TO MAY 14, 1971, THE APPLICANT CONCEDED THAT ITS ALLEGATIONS WERE BASED ON RUMOUR AND SPECULATION. ACCORDINGLY, THE BOARD DID NOT PERMIT THE APPLICANT TO ADDUCE EVIDENCE WITH RESPECT TO ITS ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT AGAINST THE INTERVENER WHICH ALLEGEDLY OCCURRED SUBSEQUENT TO MAY 14, 1971.

8. IT WAS THE APPLICANT'S POSITION THAT THE INTERVENER, BY VIRTUE OF THE ACTS WHICH ALLEGEDLY TOOK PLACE ON MAY 14, 1971, HAD COERCED AND INTIMIDATED THE EMPLOYEES OF THE RESPONDENT AFFECTED BY THIS APPLICATION TO BECOME MEMBERS OF THE INTERVENER. THE INTERVENER DENIED THAT IT HAD EITHER CONTRAVENED ANY OF THE PROVISIONS OF THE LABOUR RELATIONS ACT, OR INTIMIDATED ANY OF THE EMPLOYEES OF THE RESPONDENT INTO BECOMING MEMBERS OF THE INTERVENER.

9. HARRY ANTONIDES, PETER DALE AND ROBERT PALMER WERE CALLED AS WITNESSES BY THE APPLICANT. HARVEY MICHAUD WAS CALLED AS A WITNESS BY THE INTERVENER.

10. THE EVIDENCE ESTABLISHED THAT ON EITHER MAY 6TH OR MAY 7TH, 1971 THE FOUR EMPLOYEES AFFECTED BY THIS APPLICATION, NAMELY, THOMAS HULL, ANTHONY PALMER, ROBERT PALMER AND BRIAN WATERS VISITED THE OFFICES OF THE INTERVENER AND SPOKE TO HARRY HINTON AND EXPRESSED A VERY STRONG DESIRE TO JOIN THE INTERVENER. HINTON EXPLAINED TO THE FOUR MEN THAT THEY WERE WELCOME TO JOIN THE INTERVENER AND THAT THIS WOULD MEAN THAT THEY WOULD HAVE TO PAY AN INITIATION FEE TO THE INTERVENER AND TAKE THEIR TURN ON THE INTERVENER'S LIST OF MEN SEEKING EMPLOYMENT. HINTON FURTHER EXPLAINED TO THEM THAT THEY WERE NOT ABLE TO JOIN THE INTERVENER "AS A COMPANY" BECAUSE THEIR EMPLOYER OPERATED TWO COMPANIES "UNDER THE SAME ROOF" AND THAT IT WAS NOT THE POLICY OF THE INTERVENER TO SEEK BARGAINING RIGHTS WITH RESPECT TO ONE OF THE COMPANIES CONTROLLED BY THEIR EMPLOYER, DEL PAGE, WHILE THE LATTER WAS OPERATED A NON-UNION COMPANY AT THE SAME TIME.

11. THESE FOUR MEN WERE UNWILLING TO LEAVE THEIR EMPLOYMENT AND SEEK MEMBERSHIP IN THE INTERVENER AT THAT TIME. IT APPEARED THAT THESE FOUR MEN DESIRED TO MOVE FROM THE FIELD OF LAYING CARPETING IN THE RESIDENTIAL FIELD TO THE FINANCIALLY MORE LUCRATIVE FIELD OF LAYING CARPETING IN THE INDUSTRIAL AND COMMERCIAL FIELD. THEY REALIZED THAT IN ORDER TO MAKE THIS CHANGE IT WAS NECESSARY FOR THEM TO JOIN A TRADE UNION SO THAT THEIR EMPLOYER WOULD BE ABLE TO WORK ON JOBS WHERE THE EMPLOYEES OF OTHER EMPLOYERS WERE UNIONIZED.

12. ON MAY 12, 1971 THESE FOUR MEN VISITED THE OFFICE OF THE APPLICANT AND BECAME MEMBERS OF THE APPLICANT. ON MAY 14, 1971 THESE FOUR MEN WERE WORKING UNDER THE SUPERVISION OF THEIR FOREMAN, HARVEY MICHAUD, AT THE TRAVELLERS BUILDING AT 400 UNIVERSITY AVENUE IN THE CITY OF TORONTO. DURING THE MORNING OF MAY 14, 1971 THESE FOUR MEN WERE APPROACHED BY ROBERT REID AND HARRY HINTON. THE FORMER ASKED TO SEE THEIR CARDS. THE FOUR MEN SHOWED THEIR MEMBERSHIP CARDS IN THE APPLICANT AND REID SAID THAT "IT WOULD NOT DO." REID THEN ASKED TO SEE THE FOREMAN OF THESE FOUR MEN. AFTER CONVERSATIONS WITH MICHAUD, JOSEPH SISTELLI (SUPERINTENDENT FOR THE TRAVELLERS INSURANCE COMPANY) AND A REPRESENTATIVE OF THE GENERAL CONTRACTOR, MICHAUD INFORMED THE MEN THAT THEY SHOULD NO LONGER WORK ON THE JOB AND TOLD THEM TO TAKE UP THEIR TOOLS AND RETURN TO THE RESPONDENT'S SHOP IN SCARBOROUGH.

13. IT APPEARS THAT REID DID MOST OF THE TALKING AND THAT HINTON SAID NOTHING AT ALL. REID INFORMED THE EMPLOYEES THAT UNLESS THE FOUR MEN LEFT THE JOB THERE WOULD BE A STRIKE. IT WAS ESTABLISHED IN EVIDENCE THAT HINTON WAS AN OFFICER OF THE INTERVENER. HOWEVER, IT WAS NOT ESTABLISHED THAT REID WAS IN ANY WAY CONNECTED WITH THE INTERVENER. IN FACT, ROBERT PALMER TESTIFIED THAT IN HIS OWN MIND HINTON HAD NOTHING TO DO WITH THE THREAT OF A STRIKE AT THE BUILDING AND THAT IN HIS OPINION REID WAS THE ADVOCATE OF THIS COURSE OF ACTION.

14. MICHAUD TESTIFIED THAT THE RESPONDENT AND THE FOUR EMPLOYEES AFFECTED BY THIS APPLICATION RETURNED TO THE JOB OF CARPET LAYING AT THE TRAVELLERS BUILDING ON MAY 20, 1971. ON THE OTHER HAND, ROBERT PALMER GAVE EVIDENCE THAT THE FOUR EMPLOYEES AFFECTED BY THIS APPLICATION DID NOT RETURN TO THE JOB OF LAYING CARPETS AT THE TRAVELLERS BUILDING UNTIL MAY 25, 1971. ON THIS POINT, WE ACCEPT THE EVIDENCE OF MICHAUD IN PREFERENCE TO THAT OF ROBERT PALMER, IN VIEW OF THE FACT THAT THE LATTER SHOWED CONSIDERABLE UNCERTAINTY REGARDING VARIOUS RELEVANT DATES THROUGHOUT HIS ENTIRE TESTIMONY.

15. ON MAY 25, 1971, FIVE DAYS AFTER THE FOUR EMPLOYEES AFFECTED BY THIS APPLICATION RETURNED TO WORK AT THE TRAVELLERS BUILDING, THESE FOUR EMPLOYEES SIGNED APPLICATIONS FOR MEMBERSHIP IN THE INTERVENER. IT APPEARED THAT THEY HAD SOUGHT OUT HINTON AND HAD AGAIN ASKED TO JOIN THE INTERVENER. ROBERT PALMER TESTIFIED THAT THE REASON THE FOUR MEN AFFECTED BY THIS APPLICATION JOINED THE INTERVENER ON MAY 25, 1971 WAS HALF BY CHOICE AND HALF BY NEED.

16. THERE WAS EVIDENCE BEFORE THE BOARD THAT THE FOUR EMPLOYEES AFFECTED BY THIS APPLICATION DISCUSSED UNION MEMBERSHIP IN GENERAL WITH THEIR EMPLOYER, DEL PAGE. HOWEVER, THERE WAS NO EVIDENCE THAT PAGE IN ANY WAY INFLUENCED HIS EMPLOYEES IN THEIR COURSE OF ACTION.

17. CONSIDERING NOW THE CONDUCT OF THE INTERVENER AS ESTABLISHED

IN EVIDENCE BEFORE THE BOARD, WE FIND THAT THE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT FILED BY THE APPLICANT HAVE NOT ESTABLISHED TO OUR SATISFACTION THAT THE EMPLOYEES AFFECTED BY THIS APPLICATION WERE COERCED OR INTIMIDATED INTO BECOMING MEMBERS OF THE INTERVENER. FIRSTLY, THERE IS NO EVIDENCE THAT THE INTERVENER, RATHER THAN REID, ADVOCATED THE POSSIBILITY OF A STRIKE TO THE EMPLOYEES. SECONDLY, THERE WAS NO EVIDENCE BEFORE THE BOARD THAT EITHER THE INTERVENER OR ANOTHER TRADE UNION WAS NOT ENTITLED TO CALL A LAWFUL STRIKE ON MAY 14, 1971. CONSIDERING THE EVIDENCE BEFORE US AS A WHOLE, WE ARE OF THE OPINION THAT THE FOUR EMPLOYEES AFFECTED BY THIS APPLICATION MADE VARIOUS DECISIONS WITH RESPECT TO UNION MEMBERSHIP IN THE APPLICANT AND THE INTERVENER WHICH SUCCESSIVELY APPEARED TO THEM TO BE IN THEIR OWN BEST ECONOMIC AND FINANCIAL INTERESTS. ACCORDINGLY, WE DISMISS THE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT FILED BY THE APPLICANT AGAINST THE INTERVENER.

18. WE ARE SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE US THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 25, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

19. WE ARE SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE US THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE INTERVENER ON MAY 25, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

20. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

21. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE CHRISTIAN LABOUR ASSOCIATION OF CANADA AND RESILIENT FLOOR WORKERS, UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2965.

22. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER F.W. MURRAY: DECEMBER 8, 1971.

1. I DISSENT.

2. I WOULD HAVE FOUND THAT THE INTERVENER, AT ALL MATERIAL TIMES, UP TO AND INCLUDING MAY 14, 1971, IN CONTRAVENTION TO SECTION 61 OF THE ACT, SOUGHT BY INTIMIDATION AND COERCION TO COMPEL EMPLOYEES FROM CONTINUING TO BE A MEMBER OF THE APPLICANT AND ACCORDINGLY I WOULD HAVE FOLLOWED THE BOARD'S USUAL POLICY OF ASSUMING THAT ANY SUBSEQUENT ACT BY THE EMPLOYEES HAD BEEN SO INFLUENCED BY THIS COERCIVE ACTIVITY SO THAT A REPRESENTATION VOTE WOULD NOT DISCLOSE THE TRUE WISHES OF THE EMPLOYEES.

3. MY NOTES INDICATE THAT MR. HARVEY MICHAUD, THE RESPONDENT'S FOREMAN KNEW MR. REID TO BE A REPRESENTATIVE OF THE INTERVENER. MY NOTES ALSO INDICATE THAT ROBERT PALMER, THE EMPLOYEE OF THE RESPONDENT, KNEW THAT ROBERT REID WAS A REPRESENTATIVE OF THE CARPENTERS, BUT DID NOT KNOW HIS OFFICIAL CAPACITY. HE HAD KNOWN MR. HARRY HINTON AS BEING A REPRESENTATIVE OF THE CARPENTERS, AND INDEED HAD BEEN PREVIOUSLY TOLD BY MR. HINTON TO LEAVE OTHER JOBS, AND HE FURTHER TESTIFIED THAT HE KNEW HINTON HAD SOMETHING TO DO WITH THE HIRING AND FIRING OF EMPLOYEES.

4. PALMER FURTHER TESTIFIED THAT WHILE REID DID ALMOST ALL OF THE TALKING ON MAY 14TH, HINTON WAS PRESENT AT ALL MATERIAL TIMES, INCLUDING WHEN PALMER AND SEVERAL OTHER EMPLOYEES SHOWED THEIR MEMBERSHIP CARDS IN THE APPLICANT, AND WERE TOLD BY REID THAT "IT WOULD NOT DO". REID CLEARLY INDICATED THAT HE EXPECTED THE RESPONDENT'S EMPLOYEES TO BE OFF THE JOB BY THE END OF THE LUNCH BREAK. MR. HINTON MADE NO OBJECTION TO ANY OF THESE STATEMENTS OR DECLARATIONS BY REID.

5. MR. PALMER'S TESTIMONY ABOUT THE CONDITIONS PLACED ON THEIR MEMBERSHIP WHEN HE AND SEVERAL OTHERS ORIGINALLY SOUGHT MEMBERSHIP IN THE INTERVENER, LED TO HIS TESTIMONY IN WHICH HE SAID "IN THE OFFICE HE (MR. HINTON) HAD NO INTENTION OF LETTING US SIGN -- IN THE PARKING LOT HE ASKED IF WE WERE STILL READY TO JOIN". "AT THE FIRST MEETING I WAS BEGGING TO GET IN, AT THE SECOND MEETING AFTER THEY KNEW THE TROUBLE THEY WERE IN, THEY WERE ANXIOUS FOR US TO JOIN, I THINK".

6. IT IS CLEAR THAT THE EMPLOYEES, AFTER BEING EFFECTIVELY DEPRIVED OF EMPLOYMENT AT THE TRAVELLER'S TOWER, FOUND THAT MEMBERSHIP IN THE INTERVENER WAS A PRE-REQUISITE INsofar AS PERFORMING THIS AND OTHER SIMILAR TYPES OF WORK. THIS WAS FURTHER SUBSTANTIATED IN PALMER'S CROSS-EXAMINATION WHEN HE SAID THAT "JOINING THE CARPENTER'S UNION WAS THE ONLY WAY TO GET IT" (WORK AT THE TRAVELLER'S TOWER) AND JOINED "HALF BY CHOICE AND HALF BY NEED".

7. I WOULD ASSUME THAT THE BOARD WOULD TREAT A THREAT OF, AND INDEED A CESSATION OF EMPLOYMENT BY AN EMPLOYER AS BEING AN ACT OF INTIMIDATION AND COERCION, AND THE BOARD HAS TREATED SUCH ACTIVITY AS BEING SUFFICIENT TO CONCLUDE THAT A VOTE WOULD NOT DISCLOSE THE TRUE WISHES OF THE EMPLOYEES. CERTAINLY A PETITION IN OPPOSITION TO

AN APPLICANT UNION ACQUIRED UNDER SUCH CIRCUMSTANCES WOULD QUICKLY BE SET ASIDE BY THIS BOARD. ACCORDINGLY, I WOULD HAVE GIVEN NO WEIGHT TO THE MEMBERSHIP EVIDENCE SUBMITTED BY THE INTERVENER AND WOULD HAVE FOUND THAT THE APPLICANT, HAVING REPRESENTED MORE THAN 65% OF THE EMPLOYEES IN THE BARGAINING UNIT AS OF THE DATE OF THE MAKING OF THE APPLICATION, WAS ENTITLED TO OUTRIGHT CERTIFICATION.

1142-71-JD: LEADER MASONRY & FORMING LIMITED (COMPLAINANT) V. LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837, UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 18, THE FRID CONSTRUCTION COMPANY LIMITED (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS A. MAIN AND F. W. MURRAY.

APPEARANCES AT THE HEARING: D. W. BINNING AND R. WOOD FOR THE COMPLAINANT; MICHAEL HORAN AND HENRY MANCINELLI FOR LABOURERS LOCAL 837; NO ONE FOR CARPENTERS LOCAL 18; F. D. YON YEN, E. H. GEORGE, J. MC-ASLAN AND P. RICE FOR FRID CONSTRUCTION.

DECISION OF THE BOARD: DECEMBER 13, 1971.

1. THIS IS A COMPLAINT MADE UNDER SECTION 81 OF THE LABOUR RELATIONS ACT.
2. THE WORK IN DISPUTE BETWEEN THE RESPONDENT TRADE UNIONS IS THE ERECTION AND DISMANTLING OF TUBULAR METAL SCAFFOLDING EXTENDING TO A HEIGHT IN EXCESS OF 14 FEET WHICH SCAFFOLDING IS BEING USED FOR BRICKLAYING ON THE HAMILTON THEATRE-AUDITORIUM CONSTRUCTION PROJECT IN HAMILTON.
3. THE EVIDENCE AS TO THE PAST PRACTICE OF THE COMPLAINANT AND OF OTHER MASONRY CONTRACTORS IN THE HAMILTON AREA FAVOURS THE CLAIM TO THE WORK MADE BY THE LABOURERS. FURTHER, THE EVIDENCE IS THAT IT IS MORE ECONOMICAL TO USE LABOURERS RATHER THAN CARPENTERS TO DO THE WORK IN DISPUTE. MOREOVER, ACCORDING TO THE EVIDENCE THERE ARE NO TOOLS AND NO PARTICULAR SKILLS REQUIRED TO ERECT THE SCAFFOLDING (SEE ABE DICK MASONRY LIMITED CASE (BOARD FILE NO. 17161(A)-69-JD); ABE DICK MASONRY LIMITED CASE OLRB M.R. JULY 1971 P. 432; JOHN E. SMITH & SON LATH, PLASTER & ACUSTICAL CONTRACTORS (1968) LIMITED CASE OLRB M.R. AUGUST 1971 P. 466).

4. HAVING REGARD TO THE FOREGOING CONSIDERATIONS, THE BOARD DIRECTS THAT THE COMPLAINANT LEADER MASONRY & FORMING LIMITED ASSIGN THE WORK INVOLVED IN THE ERECTION AND DISMANTLING OF TUBULAR METAL SCAFFOLDING EXTENDING TO A HEIGHT IN EXCESS OF 14 FEET WHICH SCAFFOLD-

ING IS BEING USED FOR BRICKLAYING ON THE HAMILTON THEATRE-AUDITORIUM CONSTRUCTION PROJECT IN HAMILTON TO EMPLOYEES WHO ARE REPRESENTED BY THE LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837.

159-70-M: ROBERT VANDERHILL (APPLICANT) V. COMMUNICATIONS WORKERS OF AMERICA (RESPONDENT TRADE UNION) V. NORTHERN ELECTRIC COMPANY LIMITED (RESPONDENT EMPLOYER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS A. MAIN AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: W. R. HERRIDGE, Q.C., FOR THE APPLICANT; PETER KLYM FOR THE RESPONDENT TRADE UNION, NO ONE FOR THE RESPONDENT EMPLOYER.

DECISION OF THE BOARD: DECEMBER 13, 1971.

1. THE NAME "COMMUNICATIONS WORKERS OF AMERICA, ON BEHALF OF LOCAL NO. C-4" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT TRADE UNION IS AMENDED TO READ: "COMMUNICATIONS WORKERS OF AMERICA".

2. THE APPLICANT IS APPLYING TO THE BOARD PURSUANT TO SECTION 39 OF THE LABOUR RELATIONS ACT FOR EXEMPTION ON THE GROUNDS OF RELIGIOUS CONVICTION OR BELIEF FROM THE SECURITY PROVISIONS IN A COLLECTIVE AGREEMENT ENTERED INTO BETWEEN THE RESPONDENT TRADE UNION (HEREINAFTER REFERRED TO AS THE COMMUNICATIONS WORKERS) AND THE RESPONDENT EMPLOYER (HEREINAFTER REFERRED TO AS NORTHERN ELECTRIC).

3. THE APPLICANT IS AN INSTALLER IN THE EMPLOY OF NORTHERN ELECTRIC AND IS A MEMBER OF THE BARGAINING UNIT COVERED BY THE CURRENT COLLECTIVE AGREEMENT BETWEEN THE COMMUNICATIONS WORKERS AND NORTHERN ELECTRIC. THE SAID BARGAINING UNIT IS DESCRIBED IN THE AGREEMENT IN TERMS OF THE EMPLOYEES OF THE COMPANY'S WESTERN REGION INSTALLATION WHO HAVE THEIR HEADQUARTERS IN TORONTO AND WHO ARE ASSIGNED TO BASE LOCATIONS, INCLUDING HAMILTON, AND WHO ARE EMPLOYED IN CONNECTION WITH THE INSTALLATION OF COMMUNICATIONS AND RELATED EQUIPMENT. THE APPLICANT'S BASE LOCATION IS HAMILTON AND HE IS EMPLOYED BY NORTHERN ELECTRIC INSTALLING AND TESTING NEW EQUIPMENT FOR THE BELL TELEPHONE COMPANY OF CANADA WHICH IS MANUFACTURED BY NORTHERN ELECTRIC.

4. THE COMMUNICATIONS WORKERS APPLIED TO THE ONTARIO BOARD FOR CERTIFICATION FOR A UNIT OF EMPLOYEES OF NORTHERN ELECTRIC COMPOSED OF ALL EMPLOYEES IN THE INSTALLATION AND OUTSIDE PLANT DEPARTMENTS OF NORTHERN ELECTRIC EMPLOYED IN THE PROVINCE OF ONTARIO. A QUESTION WAS RAISED IN THAT APPLICATION AS TO THE JURISDICTION OF THE BOARD TO ENTER-

TAIN THE APPLICATION. HAVING CONSIDERED THE REPRESENTATIONS AND JUDICIAL AUTHORITIES CITED BY THE PARTIES ON THIS ISSUE, THE BOARD RULED THAT THE OPERATIONS OF THE INSTALLERS IN THE EMPLOY OF NORTHERN ELECTRIC FOR WHOM THE COMMUNICATIONS WORKERS WERE SEEKING CERTIFICATION FELL WITHIN PROVINCIAL JURISDICTION AND THAT ACCORDINGLY THE INSTALLERS WHEN EMPLOYED IN ONTARIO WERE EMPLOYEES OF NORTHERN ELECTRIC FOR THE PURPOSES OF THE ONTARIO LABOUR RELATIONS ACT. THE BOARD THEREFORE ASSERTED JURISDICTION WITH RESPECT TO THEM (SEE NORTHERN ELECTRIC COMPANY LIMITED CASE OLRB M.R. FEBRUARY 1969 P. 1153). THE BOARD THEREUPON PROCEEDED TO FIND THAT ALL EMPLOYEES IN THE INSTALLATION DEPARTMENT AND OUTSIDE PLANT DEPARTMENT EMPLOYED IN ONTARIO, WITH CERTAIN EXCEPTIONS WHICH ARE NOT MATERIAL FOR PURPOSES OF THE INSTANT DECISION, WERE AN APPROPRIATE UNIT FOR COLLECTIVE BARGAINING (SEE NORTHERN ELECTRIC COMPANY LIMITED CASE OLRB M.R. MARCH 1969 P. 1263). WHILE THE BARGAINING UNITS ARE DESCRIBED IN DIFFERENT NOMENCLATURE, THE ABOVE UNIT FOUND TO BE APPROPRIATE BY THE BOARD AND THAT SET OUT IN THE COLLECTIVE AGREEMENT BETWEEN THE COMMUNICATIONS WORKERS AND NORTHERN ELECTRIC COVER THE SAME EMPLOYEES. IN OTHER WORDS, THE APPLICANT IS INCLUDED IN THE BARGAINING UNIT UNDER EITHER DESCRIPTION.

5. NORTHERN ELECTRIC APPLIED FOR AN ORDER IN LIEU OF A WRIT OF CERTIORARI REMOVING INTO THE SUPREME COURT AND QUASHING THE ABOVE CITED DECISIONS OF THE BOARD DATED FEBRUARY 11, 1969 AND MARCH 24, 1964, WHEREBY THE BOARD HELD THAT IT HAD CONSTITUTIONAL JURISDICTION TO ENTERTAIN THE APPLICATION FOR CERTIFICATION OF THE COMMUNICATIONS WORKERS AND TO DETERMINE THE COMPOSITION OF THE BARGAINING UNIT. IN REGINA V. ONTARIO LABOUR RELATIONS BOARD, EX PARTE NORTHERN ELECTRIC CO. LTD. 11 D.L.R. (3d) 640, LACOURCIERE, J. IN THE ONTARIO HIGH COURT HELD THE LABOUR RELATIONS OF THE INSTALLERS OF NORTHERN ELECTRIC WERE NOT GOVERNED BY THE ONTARIO LABOUR RELATIONS ACT AND THAT THE BOARD THEREFORE WAS WITHOUT CONSTITUTIONAL JURISDICTION TO DEAL WITH THE CERTIFICATION APPLICATION OF THE COMMUNICATIONS WORKERS.

6. HAVING REGARD TO THE DECISION OF MR. JUSTICE LACOURCIERE THAT THE INSTALLATION OPERATIONS OF NORTHERN ELECTRIC ARE NOT GOVERNED BY THE ONTARIO LABOUR RELATIONS ACT AND IN VIEW OF THE FACT THAT THE APPLICANT IS EMPLOYED IN THE CAPACITY OF AN INSTALLER BY NORTHERN ELECTRIC, THE BOARD FINDS THAT IT IS WITHOUT JURISDICTION TO DEAL WITH THE INSTANT APPLICATION.

7. THE APPLICATION ACCORDINGLY IS DISMISSED.

995-71-R: FRED WEPPLER, DONALD WRIGHT, BERNIE STEVENSON AND LARRY HAMEL (APPLICANTS) V. INTERNATIONAL UNION OF UNITED BREWERY FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA AFL-CIO-CLC (RESPONDENT) V. SEVEN-UP (ONTARIO) LIMITED (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: F. WEPPLER, L. HAMEL, D. WRIGHT AND B. STEVENSON FOR THE APPLICANTS; B. DUNN AND D. WAGNER FOR THE RESPONDENT; A. J. CLARK, Q.C., AND P. M. CAMPBELL FOR THE INTERVENER.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER P. J. O'KEEFE: DECEMBER 13, 1971.

1. THIS IS AN APPLICATION MADE UNDER SECTION 49 OF THE ACT FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS HELD BY THE RESPONDENT FOR A UNIT OF EMPLOYEES OF THE INTERVENER.

2. THE RESPONDENT AND THE INTERVENER WERE PARTIES TO A COLLECTIVE AGREEMENT WHICH EXPIRED ON SEPTEMBER 18, 1971. THE SAME PERSONS WHO ARE APPLICANTS IN THE INSTANT CASE MADE AN EARLIER APPLICATION TO THE BOARD UNDER SECTION 49 ON AUGUST 10, 1971 FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS HELD BY THE RESPONDENT. BY LETTER DATED AUGUST 11, 1971, THE RESPONDENT SERVED NOTICE ON THE INTERVENER OF ITS DESIRE TO BARGAIN FOR A RENEWAL OF THE COLLECTIVE AGREEMENT IN EFFECT BETWEEN THEM. NO DATE FOR A MEETING OF THE PARTIES WAS PROPOSED BY THE RESPONDENT IN ITS LETTER. THE AUGUST 10, 1971 APPLICATION FOR TERMINATION OF BARGAINING RIGHTS WAS HEARD BY THE BOARD ON AUGUST 30, 1971. BY A DECISION DATED SEPTEMBER 13, 1971, THE BOARD DISMISSED THE SAID APPLICATION ON THE GROUNDS THAT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF THE INTERVENER IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, HAD VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISHED TO BE REPRESENTED BY THE RESPONDENT TRADE UNION. ON SEPTEMBER 16, 1971, THE RESPONDENT REQUESTED THAT THE MINISTER APPOINT A CONCILIATION OFFICER. ON SEPTEMBER 18, 1971, THE INSTANT APPLICATION WAS FILED WITH THE BOARD.

3. COUNSEL FOR THE RESPONDENT SUBMITTED THAT HAVING REGARD TO THE FACT THAT THE INSTANT APPLICATION WAS FILED THREE DAYS AFTER THE BOARD DISMISSED THE PRIOR APPLICATION FOR TERMINATION OF BARGAINING RIGHTS MADE BY THE SAME APPLICANTS, THE INSTANT APPLICATION IS UNTIMELY AND SHOULD NOT BE ENTERTAINED BY THE BOARD. IN SUPPORT OF HIS POSITION, COUNSEL FOR THE RESPONDENT REFERRED TO THE PRINCIPLES LAID DOWN IN THE TRINIDAD LEASEHOLDS (CANADA) LTD. CASE 52 CLLC ¶17,005, AND SUBSEQUENT DECISION OF THE BOARD. MORE PARTICULARLY, COUNSEL CITED THE BOARD'S DECISIONS IN THE FOLLOWING CASES: FILEY-HALL PAPER BOX CO. LIMITED 52 CLLC ¶17,037; CANADIAN SEALRIGHT CO. LTD. 59 CLLC ¶18,157; WESMAK LUMBER CO. LIMITED OLRB M.R. MARCH 1961 P. 447; CONTINENTAL CAN COMPANY OF CANADA, LIMITED OLRB M.R. DECEMBER 1964 P. 459. COUNSEL ALSO SOUGHT TO DISTINGUISH THE BOARD'S DECISION IN THE SOO DAIRIES LIMITED CASE [1971] OLRB REP. 439 ON THE BASIS OF THE DIFFERENCE IN THE FACT

SITUATIONS IN THAT CASE.

4. WITH REFERENCE TO THE CIRCUMSTANCES OF THE INSTANT CASE, COUNSEL FOR THE INTERVENER SUBMITTED THAT IT WAS SIGNIFICANT THAT THE RESPONDENT ONLY SERVED NOTICE OF ITS DESIRE TO BARGAIN ON AUGUST 11, 1971, A DAY FOLLOWING THE FILING OF THE FIRST APPLICATION FOR TERMINATION OF BARGAINING RIGHTS AND NEARLY A MONTH AFTER THE DATE ON WHICH IT WAS ENTITLED TO SERVE NOTICE ON THE INTERVENER OF ITS DESIRE TO BARGAIN FOR A NEW COLLECTIVE AGREEMENT. COUNSEL SUBMITTED, HOWEVER, THAT OF GREATER IMPORTANCE WAS THE FACT THAT AT NO TIME AFTER THE SERVING OF NOTICE AND PRIOR TO APPLYING FOR CONCILIATION SERVICES DID THE RESPONDENT SEEK TO BARGAIN WITH THE INTERVENER. COUNSEL ARGUES THAT IN THESE CIRCUMSTANCES, IT CANNOT BE SAID THAT THERE HAS BEEN ANY REAL DISRUPTION OF THE COLLECTIVE BARGAINING RELATIONSHIP BETWEEN THE UNION AND THE COMPANY. THIS BEING THE CASE, COUNSEL FOR THE INTERVENER FURTHER ARGUES THAT THE SITUATION IS ANALOGOUS TO THAT IN THE SOO DAIRIES CASE (SUPRA) WHERE THE BOARD HELD THAT A PRIOR APPLICATION FOR TERMINATION OF BARGAINING RIGHTS HAD NOT CAUSED "UNDUE INTERFERENCE WITH BARGAINING" AND FOUND A SECOND APPLICATION BY THE SAME APPLICANTS MADE SHORTLY THEREAFTER TO BE TIMELY. COUNSEL FOR THE INTERVENER SUBMITS THAT THE PRINCIPLES SET FORTH IN THE TRINIDAD LEASEHOLDS CASE (SUPRA) AND THE SUBSEQUENT CASES RELIED UPON BY COUNSEL FOR THE RESPONDENT ARE NOT APPLICABLE TO THE FACTS OF THE INSTANT CASE. COUNSEL FOR THE INTERVENER THEREFORE CONTENTS THAT THE BOARD, IN THE EXERCISE OF ITS DISCRETION, SHOULD FIND THAT THE INSTANT APPLICATION IS TIMELY.

5. THE TRINIDAD LEASEHOLDS (CANADA) LTD. CASE (SUPRA) WAS AN APPLICATION FOR CERTIFICATION UNDER THE REGULATIONS OF THE WARTIME LABOUR RELATIONS BOARD. THE APPLICANT'S INITIAL APPLICATION WAS DISMISSED BY THE BOARD BECAUSE "IT DID NOT HAVE AS MEMBERS IN GOOD STANDING A MAJORITY OF THE EMPLOYEES CONCERNED." A SUBSISTING COLLECTIVE BARGAINING RELATIONSHIP EXISTED BETWEEN AN INTERVENER TRADE UNION AND THE RESPONDENT EMPLOYER. LESS THAN TWO MONTHS AFTER THE PRIOR DISMISSAL THE APPLICANT AGAIN APPLIED FOR CERTIFICATION OF THE SAME BARGAINING UNIT. IN DEEMING THE SECOND APPLICATION UNTIMELY THE BOARD STATED AS FOLLOWS AT P. 1355:

THE PRIMARY OBJECTIVE OF THE REGULATIONS IS TO PROMOTE SOUND AND EFFECTIVE COLLECTIVE BARGAINING AND IT MUST BE ASSUMED THAT THE METHOD FURNISHED BY THE CERTIFICATION PROVISIONS OF THE REGULATIONS FOR THE ORDERLY DISPOSITION OF REPRESENTATION MATTERS IS DESIGNED TO CONTRIBUTE TO THE ATTAINMENT OF THAT OBJECTIVE. THOSE PROVISIONS REFLECT A REALIZATION OF THE FACT THAT COLLECTIVE BARGAINING WILL NOT

FLOURISH NOR WILL A SOUND COLLECTIVE BARGAINING RELATIONSHIP ENDURE WHERE A QUESTION OF REPRESENTATION OF EMPLOYEES IS OUTSTANDING. IT IS EVIDENT, HOWEVER, THAT QUESTIONS OF REPRESENTATION ARE NOT TO BE RAISED INDISCRIMINATELY AND THAT THE DETERMINATION OF SUCH QUESTIONS IS TO INVOLVE A MEASURE OF FINALITY.

THE BOARD THEN WENT ON TO DISCUSS THE OBJECTIVE OF THE REGULATION IN PROVIDING A RECENTLY CERTIFIED TRADE UNION THE PROTECTIVE PERIOD FOLLOWING A BOARD ORDER AND STATED:

THE INTENT CLEARLY IS TO STABILIZE THE CONDITIONS ESSENTIAL TO COLLECTIVE BARGAINING FOR A REASONABLE PERIOD FOLLOWING A DETERMINATION OF THE QUESTION OF REPRESENTATION SO AS TO ENCOURAGE, IN THE ONE INSTANCE, THE INITIATION AND DEVELOPMENT OF AN EFFECTIVE COLLECTIVE BARGAINING RELATIONSHIP, AND IN THE OTHER, THE MAINTENANCE AND IMPROVEMENT OF AN ESTABLISHED COLLECTIVE BARGAINING RELATIONSHIP.

THE BOARD WENT ON TO DISCUSS THE BALANCE THAT MUST BE ACHIEVED WITH RESPECT TO THE RIGHT OF EMPLOYEES TO SELECT A NEW BARGAINING AGENT AS WEIGHED AGAINST THE DESIRABILITY OF SECURITY STABILITY AND CONTINUITY IN COLLECTIVE BARGAINING, IN THE FOLLOWING TERMS:

... IT WOULD NOT, IN OUR VIEW, ACCORD WITH THE MANIFEST PURPOSE OF THAT REGULATION TO CONCLUDE THAT ONCE THE TEN MONTH PERIOD HAS PASSED ANY NUMBER OF APPLICATIONS MAY THEN BE MADE, WITHOUT INTERVAL, BY THE SAME APPLICANT. ON THE CONTRARY WE ARE OF OPINION THAT WHERE THERE IS A CURRENT AND ACTIVE COLLECTIVE BARGAINING RELATIONSHIP AND WHERE AN APPLICATION, PROPERLY MADE UNDER REGULATION 7(4), IS REJECTED ON THE GROUND THAT THE APPLICANT DOES NOT ENJOY THE REQUISITE EMPLOYEE SUPPORT, A SECOND APPLICATION BY THE SAME APPLICANT SHOULD NOT BE ENTERTAINED BY THE BOARD UNTIL A REASONABLE OPPORTUNITY HAS BEEN GIVEN TO THE PARTIES TO THE COLLECTIVE AGREEMENT TO BARGAIN COLLECTIVELY WITH A VIEW TO ITS RENEWAL.

ON THE FACTS OF THE CASE, THE BOARD PROCEEDED TO STRIKE THE BALANCE BETWEEN THE SAID RIGHTS OF THE EMPLOYEES WITH THE EQUALLY IMPORTANT CONSIDERATION OF STABILITY AND CONTINUITY IN COLLECTIVE BARGAINING, IN THE FOLLOWING FASHION:

OUR EARLIER DECISION, BY IMPLICATION, IDENTIFIED THE INTERVENER AS THE AUTHORIZED BARGAINING AGENT OF THE EMPLOYEES AFFECTED. LITTLE PURPOSE WAS SERVED IF THE RIGHT OF THE INTERVENER TO CONTINUE TO REPRESENT THOSE EMPLOYEES WAS IMMEDIATELY THEREAFTER AGAIN SUBJECT TO QUESTION AT THE INSTANCE OF THE SAME APPLICANT. THE RESPONDENT AND THE INTERVENER HAVE INEVITABLY BEEN HAMPERED IN THEIR COLLECTIVE BARGAINING ACTIVITIES DURING THE PERIOD WHEN THEY WOULD ORDINARILY HAVE BEEN DIRECTING EVERY REASONABLE EFFORT TOWARD THE NEGOTIATION OF A RENEWAL OF THE COLLECTIVE AGREEMENT. IT IS OUR VIEW THAT BEFORE THE BOARD UNDERTAKES A FURTHER CONSIDERATION OF THE QUESTION OF REPRESENTATION ON AN APPLICATION BY THE PRESENT APPLICANT THE RESPONDENT AND THE INTERVENER MUST BE PERMITTED A REASONABLE PERIOD OF TIME DURING WHICH TO CARRY ON COLLECTIVE BARGAINING WITHOUT HINDRANCE.

6. IN THE FILEY-HALL PAPER BOX CO. LIMITED CASE (SUPRA) AN EMPLOYEES' ASSOCIATION APPLIED FOR CERTIFICATION WHICH APPLICATION WAS DISMISSED FOR FAILURE "TO SATISFY THE BOARD OF ITS RIGHT TO CERTIFICATION" (I.E. ON THE BASIS OF THE MEMBERSHIP COUNT). FOUR DAYS AFTER THE DECISION AN APPLICATION FOR TERMINATION OF BARGAINING RIGHTS WAS FILED BY AN OFFICER OF THE ASSOCIATION WHOSE APPLICATION FOR CERTIFICATION HAD RECENTLY BEEN DISMISSED. THE APPLICANT, IN THE LANGUAGE OF THE APPLICATION, WAS AUTHORIZED TO REPRESENT THE EMPLOYEES WHOSE NAMES WERE ATTACHED TO A LIST OF SIGNATURES FOR PURPOSES OF THE TERMINATION PROCEEDINGS. THE RESPONDENT UNION HAD SERVED NOTICE FOR RENEWAL OF THE COLLECTIVE AGREEMENT BUT NO BARGAINING HAD YET TRANSPIRED. ON THE BASIS OF THE ABOVE FACTS AND CIRCUMSTANCES OF THE CASE, THE BOARD, IN APPLYING THE PRINCIPLES LAID DOWN IN THE TRINIDAD LEASEHOLDS CASE (SUPRA), HELD THE APPLICATION TO BE UNTIMELY, STATING AT P. 1411:

IN ALL THE CIRCUMSTANCES OF THE PRESENT CASE, ONE CAN ONLY CONCLUDE THAT THE CURRENT APPLICATION IS BEING BROUGHT ON TO TRY THE SAME REPRESENTATION DISPUTE AS WAS PREVIOUSLY BEFORE THE BOARD, AND WHICH WAS DISMISSED ON JUNE 5TH, 1952. THE CONCLUSION IS INESCAPABLE WHERE, AS HERE, A DISMISSAL OF AN APPLICATION FOR CERTIFICATION IS FOLLOWED WITH PRACTICALLY NO LAPSE OF TIME BY THE FILING OF AN APPLICATION UNDER SECTION 41: AND WHERE, AS HERE, THE PERSON AUTHORIZED TO REPRESENT THE EMPLOYEES IS THE SAME PERSON WHO, BY VIRTUE OF

HIS POSITION IN THE PREVIOUS APPLICANT WAS AUTHORIZED TO REPRESENT THEM IN THAT APPLICATION; AND WHERE, AS HERE, SUBSTANTIALLY THE SAME GROUP OF EMPLOYEES APPARENTLY SUPPORTED BOTH APPLICATIONS. IT IS CLEAR THAT THE DECISION IN TRINIDAD LEASEHOLDS WOULD NOT HAVE PERMITTED A RENEWAL OF THE APPLICATION FOR CERTIFICATION, AND THE BOARD IS OF THE OPINION THAT IT WAS NEVER CONTEMPLATED THAT SECTION 41 OF THE ACT SHOULD PROVIDE AN INDIRECT MEANS OF ACCOMPLISHING THAT WHICH SHOULD NOT BE ACCOMPLISHED BY DIRECT MEANS.

THE FILEY-HALL PAPER BOX CASE (SUPRA) REPRESENTS AN EXTENSION OF THE TRINIDAD LEASEHOLDS PRINCIPLE, IN THAT IF THE NATURE OF THE SUBSEQUENT APPLICATION INVOLVES A "REPRESENTATIVE" ISSUE PREVIOUSLY DETERMINED ON ITS MERITS, IT MATTERS LITTLE IF THE APPLICATION IS FRAMED BY WAY OF CERTIFICATION OR TERMINATION. IN ALL OTHER RESPECTS, THE CRITERIA CITED IN THE TRINIDAD LEASEHOLDS CASE (SUPRA) PREVAILED FOR PURPOSES OF RULING THE APPLICATION FOR TERMINATION UNTIMELY.

7. THE LATER WINDSOR LUMBER CO. LTD. CASE 58 CLLC 9118,104 CONCERNED AN APPLICATION FOR CERTIFICATION BY A TRADE UNION WHOSE PRIOR APPLICATION WAS DISMISSED BECAUSE SOME OF THE EVIDENCE OF MEMBERSHIP FILED WITH THE BOARD WAS RULED TO BE "STALE". IN A SUBSEQUENT APPLICATION MADE EIGHT DAYS AFTER THE DISMISSAL OF THE PRIOR APPLICATION, THE EVIDENCE OF MEMBERSHIP FILED WAS DATED ON THE DATE OF THE INITIAL APPLICATION. THE APPLICANT SUBMITTED THAT THE EVIDENCE FILED IN THE FIRST APPLICATION WAS FILED IN ERROR AND THAT THE EVIDENCE PRESENTLY BEFORE THE BOARD REPRESENTED THE TRUE WISHES OF THE EMPLOYEES CONCERNED. A SUBSISTING COLLECTIVE BARGAINING RELATIONSHIP WAS IN EXISTENCE BETWEEN THE RESPONDENT EMPLOYER AND INCUMBENT TRADE UNION. THESE PARTIES WERE SIGNATORIES TO A COLLECTIVE AGREEMENT CONTAINING AN AUTOMATIC RENEWAL CLAUSE. NO NOTICE HAD BEEN FILED BY THE INCUMBENT FOR RENEWAL. IN DEALING WITH THE FACT THAT THE PARTIES TO THE AGREEMENT WERE NOT ENGAGED IN COLLECTIVE BARGAINING AT THE DATE OF THE SUBSEQUENT APPLICATION, THE BOARD SAID AT P. 1696:

IN THE INSTANT CASE, THERE IS OBVIOUSLY "A CURRENT AND ACTIVE COLLECTIVE BARGAINING RELATIONSHIP" BETWEEN THE RESPONDENT COMPANY AND MILLWORKERS LOCAL #802, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA. IN ADDITION, ON THE EARLIER APPLICATION, THE APPLICANT UNION HAD FAILED TO ESTABLISH THAT IT ENJOYED "THE REQUISITE EMPLOYEE SUPPORT". THEREFORE, IF THE INSTANT APPLICATION HAD BEEN MADE WHILE THE RESPONDENT AND THE INCUMBENT UNION WERE BARGAIN-

ING FOR THE RENEWAL OF THEIR AGREEMENT, AS WAS THE SITUATION IN THE TRINIDAD LEASEHOLD CASE, IT WOULD HAVE BEEN DISMISSED IN LINE WITH THE PRINCIPLES ESTABLISHED BY THE BOARD IN THAT CASE. ... IT IS OUR OPINION THAT, IN THE ABSENCE OF SPECIAL CIRCUMSTANCES, THE PRINCIPLES OF THE TRINIDAD LEASEHOLDS CASE OUGHT TO BE EXTENDED TO A SITUATION WHERE AN APPLICATION FOR CERTIFICATION, OR FOR THAT MATTER FOR TERMINATION OF BARGAINING RIGHTS, IS MADE DURING THE "OPEN SEASON" OF SUCH A COLLECTIVE AGREEMENT. THE ERROR IN THE FILING OF THE CARDS IN THIS CASE CANNOT BE TREATED AS FALLING INTO THE CATEGORY OF SPECIAL CIRCUMSTANCES AVOIDING THE APPLICATION OF THIS PRINCIPLE. THIS APPLICATION IS ACCORDINGLY DISMISSED.

THE WINDSOR LUMBER CO. LTD. CASE (SUPRA) REPRESENTS A FURTHER EXTENSION OF THE TRINIDAD LEASEHOLDS CASE (SUPRA) IN THAT THE INCUMBENT TRADE UNION HAD NOT GIVEN NOTICE FOR RENEWAL AND THEREBY WAS NOT ENGAGED IN COLLECTIVE BARGAINING FOR RENEWAL OF THE AGREEMENT. YET THE BOARD STILL CONCLUDED THAT THE PARTIES CONTINUED TO MAINTAIN "A CURRENT AND ACTIVE COLLECTIVE BARGAINING RELATIONSHIP".

8. IN THE CANADIAN SEALRIGHT CO. LTD. CASE (SUPRA) AN INITIAL APPLICATION FOR TERMINATION WAS DISMISSED FOR FAILURE OF THE APPLICANTS TO ACCUMULATE FIFTY PER CENT OF THE SIGNATURES OF ALL EMPLOYEES IN THE BARGAINING UNIT REPRESENTED BY THE RESPONDENT TRADE UNION. TWO WEEKS LATER A SUBSEQUENT APPLICATION FOR TERMINATION WAS FILED WITH THE BOARD BY THE SAME APPLICANTS. PRIOR TO THE INITIAL APPLICATION (ONE MONTH) THE TRADE UNION HAD FILED NOTICE WITH THE EMPLOYER FOR RENEWAL. A MEETING WAS ARRANGED BUT NO BARGAINING ENSUED APPARENTLY FOR REASONS OF THE CONCURRENT APPLICATIONS FOR TERMINATION. MUCH STRESS WAS PLACED ON THE INTERPRETATION OF THE WORDS "CURRENT AND ACTIVE COLLECTIVE BARGAINING RELATIONSHIP". THE QUESTION WAS WHETHER THE TRADE UNION RESPONDENT WAS PREJUDICED BY THE FACT THAT NO BARGAINING HAD TRANSPIRED DURING THE PERIOD OF THE CONCURRENT TERMINATION APPLICATIONS OR WHETHER THE FACT OF THE EXISTENCE OF THE CONCURRENT APPLICATIONS INDICATED AN ABSENCE OF A VIABLE COLLECTIVE BARGAINING RELATIONSHIP. THE BOARD RESOLVED THE QUESTION IN THE FOLLOWING MANNER AT P. 1808:

IN THE INSTANT CASE, THE RESPONDENT UNION HAS TAKEN REASONABLE STEPS TO ASSERT ITS BARGAINING RIGHTS AT ALL MATERIAL TIMES, THE FAILURE OF THE PARTIES TO MEET IN NEGOTIATIONS BEING ATTRIBUTABLE ON THE EVIDENCE BEFORE US TO THE TWO APPLICATIONS FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS

OF THE RESPONDENT UNION. IN OUR OPINION, THOSE FACTS BRING THE CASE WITHIN THE PRINCIPLE OF THE TRINIDAD LEASEHOLDS CASE. THE PHRASE "CURRENT AND ACTIVE COLLECTIVE BARGAINING RELATIONSHIP" IN THAT CASE REFERS TO THE ACTIVITY OF THE UNION IN BARGAINING, NOT TO THE DEGREE OF SUPPORT WHICH THE UNION MAY ENJOY AMONG THE EMPLOYEES IN THE BARGAINING UNIT. OTHERWISE, THE PRINCIPLE OF THE CASE WOULD NOT BE APPLICABLE IN ANY SITUATION UNLESS THE RESPONDENT UNION WAS ABLE TO DEMONSTRATE THAT IT DID HAVE THE SUPPORT OF A SUBSTANTIAL NUMBER OF THE EMPLOYEES. IN OTHER WORDS, THE ONUS WOULD BE THROWN ON THE INCUMBENT UNION TO PROVE THAT IT CONTINUES TO HAVE THE SUPPORT OF THE EMPLOYEES, AN APPROACH TO THE PROBLEM CLEARLY INCONSISTENT WITH THE POLICY EMBODIED IN...THE ACT. WE ARE NOT CALLED UPON IN THIS PROCEEDING TO DETERMINE WHETHER THE RESPONDENT UNION WOULD OR WOULD NOT BARGAIN OR WHETHER IT COULD OR COULD NOT COMPLY WITH THE PROVISIONS OF SECTION 12 OF THE ACT. AT THIS STAGE ONE CAN ONLY SPECULATE AS TO THE UNION'S ABILITY TO ENTER INTO OR TO CARRY THROUGH NEGOTIATIONS SUCCESSFULLY. HAVING REGARD TO THESE CONSIDERATIONS, WE ARE OF THE OPINION THAT, SINCE A REASONABLE OPPORTUNITY WAS NOT AFFORDED TO THE RESPONDENT, BETWEEN THE DATE OF THE DISMISSAL OF THE FIRST APPLICATION AND THE DATE OF THE FILING OF THE INSTANT APPLICATION, TO DEMONSTRATE ITS ABILITY TO BARGAIN, THE APPLICATION SHOULD BE DISMISSED.

THE CANADIAN SEALRIGHT CO. LTD. CASE (SUPRA) CHARACTERIZES THE ISSUE IN TERMS OF THE REASONABLENESS OF THE OPPORTUNITY AFFORDED TO BARGAIN AND NOT IN TERMS OF WHETHER FOR WHATEVER REASONS THE TRADE UNION HAS FAILED TO BARGAIN.

9. IN THE WESHAK LUMBER CO. LIMITED CASE (SUPRA) THE INCUMBENT TRADE UNION FILED NOTICE WITH THE INTERVENER COMPANY FOR RENEWAL OF A COLLECTIVE AGREEMENT. AN APPLICATION FOR TERMINATION WAS SUBSEQUENTLY MADE AND DISMISSED TWO MONTHS LATER AFTER PROTRACTED PROCEEDINGS. THE UNION REFILED ITS NOTICE TO BARGAIN IMMEDIATELY THEREAFTER. THE COMPANY A MONTH THEREAFTER FILED AN APPLICATION FOR A DECLARATION TERMINATING BARGAINING RIGHTS WHICH APPLICATION WAS DISMISSED BY THE BOARD. AGAIN NOTICE WAS FILED BUT WITHOUT REPLY FROM THE COMPANY. THEN ANOTHER APPLICATION FOR TERMINATION WAS FILED BY AN EMPLOYEE WHICH APPLICATION WAS PREPARED SUBSEQUENT TO THE INITIAL DISMISSED APPLICATION. ON THE QUESTION OF "THE TIMELINESS" OF THE SECOND EMPLOYEE'S APPLICA-

TION, THE BOARD MERELY MADE REFERENCE TO THE CASES HERETOFORE QUOTED AND HELD AT P. 448:

THE BOARD IS OF THE OPINION THAT THE ABOVE NOTED EVENTS BRING THE INSTANT CASE WITHIN THE PRINCIPLES LAID DOWN IN THESE CASES AND THAT THE RESPONDENT UNION HAS NOT BEEN AFFORDED A REASONABLE OPPORTUNITY, BETWEEN THE DATE ON WHICH IT GAVE NOTICE OF ITS DESIRE TO BARGAIN AND THE DATE ON WHICH THE INSTANT APPLICATION WAS MADE, TO DEMONSTRATE ITS ABILITY TO BARGAIN.

AGAIN THE EMPHASIS IN THE DECISION IS PLACED ON THE REASONABLE OPPORTUNITY TO BARGAIN.

10. IN THE CONTINENTAL CAN COMPANY OF CANADA, LIMITED CASE (SUPRA) AN INITIAL APPLICATION FOR TERMINATION WAS DISMISSED BY THE BOARD BECAUSE THE BOARD FOUND THAT THE APPLICANT FAILED TO SATISFY IT THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISHED TO BE REPRESENTED BY THE RESPONDENT. A MONTH LATER A SECOND APPLICATION WAS FILED AND THE BOARD IN APPLYING THE TRINIDAD LEASEHOLDS PRINCIPLE STATED:

IN OUR OPINION, THE INSTANT CASE, THE RESPONDENT HAS NOT HAD A REASONABLE OPPORTUNITY SINCE THE FINAL DISPOSITION OF THE FIRST APPLICATION AND THE FILING OF THE SECOND APPLICATION TO BARGAIN WITH THE INTERVENER COMPANY.

ARRANGEMENTS WERE MADE FOLLOWING THE DISMISSAL OF THE SECOND APPLICATION TO HOLD A MEETING FOR PURPOSES OF NEGOTIATING A RENEWED AGREEMENT. THE PARTIES ATTENDED THE MEETING AT WHICH TIME IT WAS AGREED THE MEETING BE ADJOURNED IN LIGHT OF AN APPEAL BEING LODGED PURSUANT TO THE BOARD'S SECOND DECISION. IN FACT, NO REQUEST FOR REVIEW OF THE BOARD'S DECISION HAD BEEN FILED AND THE RESPONDENT TRADE UNION ALLOWED SOME FOUR MONTHS TO ELAPSE WHEREUPON A THIRD APPLICATION FOR TERMINATION WAS FILED WITH THE BOARD. THE BOARD FRAMED THE ISSUE IN TERMS OF WHETHER "IN THE CIRCUMSTANCES THE RESPONDENT AND INTERVENER HAD A REASONABLE OPPORTUNITY TO BARGAIN". ALTHOUGH THE BOARD DID NOT CONDONE THE FALSE REPRESENTATIONS MADE TO THE RESPONDENT THAT AN APPLICATION FOR RECONSIDERATION WOULD BE MADE TO THE BOARD PURSUANT TO THE SECOND DECISION (WHICH PRECIPITATED THE ADJOURNMENT OF BARGAINING), NEVERTHELESS THE BOARD WAS OF THE OPINION THAT HAD THE RESPONDENT MADE PROMPT INQUIRY IT WOULD HAVE LEARNT THAT THE INTENTION TO REVIEW

THE DECISION WAS NOT WELL FOUNDED. EVEN SO, WHEN THE RESPONDENT DID LEARN THE BOARD'S DECISION WAS NOT TO BE REVIEWED, IT PERMITTED A MONTH TO ELAPSE BEFORE IT EMBARKED UPON NEGOTIATION. THUS, IN LIGHT OF THE CIRCUMSTANCES, AND HAVING REGARD TO THE RESPONDENT'S FAILURE TO COMMUNICATE WITH THE INTERVENER COMPANY AT ANY TIME DURING THE FOUR MONTH PERIOD, THE BOARD HELD THE RESPONDENT HAD AMPLE OPPORTUNITY TO BARGAIN WITH THE INTERVENER. THE BOARD STATED AT P. 461:

ALTHOUGH MR. DARRELL'S FALSE STATEMENT THAT AN APPEAL WAS BEING TAKEN FROM THE BOARD'S DECISION ON THE SECOND APPLICATION HAS CREATED UNCERTAINTY IN THE MINDS OF ALL PARTIES AND HAS, IN EFFECT, REDUCED THE PERIOD DURING WHICH BARGAINING COULD BE EXPECTED TO HAVE TAKEN PLACE, NEVERTHELESS... THE BOARD IS OF THE OPINION THAT THERE HAS BEEN, IN THE FOUR MONTHS FOLLOWING ITS DECISION... ADEQUATE OPPORTUNITY FOR THE RESPONDENT AND THE INTERVENER AT LEAST TO HAVE COMMENCED BARGAINING IN EARNEST.

WE WOULD POINT OUT THAT IN THE CIRCUMSTANCES BEFORE THE BOARD IN THE INSTANT CASE, THE RESPONDENT TRADE UNION DID NOT DELAY IN ASSERTING ITS BARGAINING RIGHTS. QUITE THE CONTRARY, FOLLOWING THE FIRST DISMISSAL IT IMMEDIATELY APPLIED TO THE MINISTER FOR THE APPOINTMENT OF A CONCILIATION OFFICER. NOTWITHSTANDING THAT REASONABLE OPPORTUNITY TO BARGAIN WAS NOT AFFORDED TO THE RESPONDENT, SUCH OPPORTUNITY AS WAS AVAILABLE WAS SEIZED UPON IN ORDER TO PURSUE BARGAINING WITH THE AID OF THE CONCILIATION PROCESSES PROVIDED UNDER THE ACT. IT SHOULD BE NOTED THAT UNLIKE EARLIER REQUIREMENTS, THE PROVISIONS OF THE ACT NOW MAKE IT MANDATORY FOR THE MINISTER TO APPOINT A CONCILIATION OFFICER UPON THE REQUEST OF EITHER PARTY PROVIDED THAT NOTICE TO BARGAIN HAS BEEN GIVEN. THERE IS NO REQUIREMENT, HOWEVER, FOR THE PARTIES TO ACTUALLY MEET AND BARGAIN.

11. IN DU PONT OF CANADA LIMITED CASE OLRB M.R. NOVEMBER 1967 P. 737, THE APPLICANT INITIALLY APPLIED FOR CERTIFICATION BY WAY OF AN INTERVENER'S APPLICATION. THE BOARD APPLIED THE PROVISIONS OF WHAT IS NOW SECTION 92(3)(A) OF THE ACT (THE INTERVENTION HAVING BEEN FILED PRIOR TO THE TERMINAL DATE PURSUANT TO THE FIRST APPLICATION) TO TREAT THE INTERVENER'S APPLICATION AS HAVING BEEN MADE ON THE INITIAL APPLICATION DATE. HAVING REGARD TO THE ABOVE CIRCUMSTANCES, THE BOARD REFUSED TO EXTEND THE TERMINAL DATE AND HENCE THE INTERVENER'S APPLICATION WAS DISMISSED FOR FAILURE TO FILE EVIDENCE OF REPRESENTATION OF AT LEAST FORTY-FIVE PER CENT OF THE EMPLOYEES IN THE UNIT. TEN DAYS LATER A SUBSEQUENT APPLICATION WAS MADE BY THE INTERVENER UNION (THE ORIGINAL APPLICANT HAVING HAD ITS APPLICATION DISMISSED). THE RESPONDENT EMPLOYER AND INCUMBENT TRADE UNION SUBMITTED THAT THE

TRINIDAD LEASEHOLDS PRINCIPLES SHOULD BE APPLIED AND THE APPLICATION BE DEEMED UNTIMELY. IN THAT CASE, THE BOARD PLACED PARTICULAR EMPHASIS ON THE CIRCUMSTANCES LEADING UP TO THE INITIAL DISMISSAL. THE APPLICANT, AS INTERVENER IN THE FIRST APPLICATION, WAS TREATED FOR PURPOSES OF FILING ITS EVIDENCE OF MEMBERSHIP IN THE SAME MANNER AS THE ACTUAL APPLICANT. TO THIS EXTENT THE APPLICANT WAS DEPRIVED OF "CARRIAGE OF THE PROCEEDINGS" AND REALLY WAS NOT TOTALLY RESPONSIBLE FOR ITS FAILURE TO MEET THE REQUIREMENT OF THE COUNT. IN THIS SENSE, THE APPLICANT WAS VICTIMIZED BY WHAT THE BOARD REGARDED AS A "TECHNICAL IRREGULARITY" AND HAVING REGARD TO THE "SPECIAL CIRCUMSTANCES" PROVISION EXPRESSED IN THE WINDSOR LUMBER CASE (SUPRA) DECLINED TO EXERCISE ITS DISCRETION TO RAISE A BAR. THE BOARD STATED AT P. 739:

IN OUR VIEW, HOWEVER, IT MUST BE RECOGNIZED THAT THE CIRCUMSTANCES IN WHICH THE APPLICANT'S FIRST APPLICATION WAS DISPOSED OF ARE NOT ON ALL FOURS WITH THE CIRCUMSTANCES WHICH OBTAINED IN EITHER THE TRINIDAD LEASEHOLDS CASE OR THE WINDSOR LUMBER CASE. IN THE PREVIOUS APPLICATION BY THE KINGSTON INDEPENDENT NYLON WORKERS UNION, THE APPLICATION WAS, BY VIRTUE OF THE PROVISIONS OF SECTION 77(3)(A) OF THE ACT, AND BY REASON OF AN APPLICATION HAVING PREVIOUSLY BEEN MADE BY ANOTHER UNION, CONSIDERED TO HAVE BEEN MADE ON A DATE EARLIER THAN THE DATE ON WHICH IT WAS IN FACT MADE. WHILE THE OUTCOME OF THAT APPLICATION MAY HAVE BEEN AFFECTED BY THE OPERATION OF THOSE PROVISIONS OF THE ACT, IT APPEARS TO US TO BE BOTH UNFAIR, AND UNDULY TECHNICAL, TO GIVE THOSE PROVISIONS AN APPLICATION GOING BEYOND THEIR NECESSARY EFFECT. AS WAS POINTED OUT IN THE TRINIDAD LEASEHOLDS CASE, THE QUESTION IS ONE OF WEIGHING THE RIGHT OF EMPLOYEES TO SELECT A NEW BARGAINING AGENT AGAINST THE DESIRABILITY OF SECURING STABILITY AND CONTINUITY IN COLLECTIVE BARGAINING. IN OUR VIEW, THAT BALANCE WOULD NOT BE PROPERLY HELD IF WE WERE TO REJECT THE INSTANT APPLICATION IN THE LIGHT OF THE EARLIER PROCEEDINGS. IT IS OUR CONCLUSION THAT THIS APPLICATION IS TIMELY.

IN APPLYING THE STANDARD SET OUT IN THE DU PONT CASE (SUPRA) WE WOULD POINT OUT THAT IN THE INSTANT CASE THE SECOND APPLICATION WAS MADE BY THE SAME PARTIES; THE APPLICATION WAS DISMISSED FOR REASONS OF A SUBSTANTIAL NATURE AND THE RESPONDENT CONTINUED TO MAINTAIN A CURRENT AND ACTIVE COLLECTIVE BARGAINING RELATIONSHIP THEREAFTER.

12. THE MOST RECENT DECISION IN WHICH THE BOARD HAS HAD OCCASION

TO DEAL WITH THE ISSUE OF THE TIMELINESS OF THE SECOND OF TWO CONCURRENT APPLICATIONS IS IN THE SOO DAIRIES LIMITED CASE (SUPRA). IN THAT CASE AN APPLICATION FOR TERMINATION OF BARGAINING RIGHTS WAS DISMISSED, NOT BECAUSE THE BOARD WAS NOT SATISFIED AS TO THE SUFFICIENCY OF THE NUMBER OF SIGNATURES APPENDED TO THE STATEMENT OF DESIRE FILED IN SUPPORT OF THE APPLICATION BUT BECAUSE THE APPLICANT FAILED TO CALL WITNESSES TO TESTIFY AS TO THE ORIGINATION OF THE STATEMENT. FAILURE TO DO SO WAS ATTRIBUTED TO THE APPLICANT'S IGNORANCE OF THE BOARD'S PROCEDURE AND COUNSEL ASSUMED FULL RESPONSIBILITY FOR THIS FAILURE. ALTHOUGH THE INCUMBENT UNION FILED NOTICE OF ITS DESIRE TO RENEW ITS AGREEMENT WITH THE INTERVENER COMPANY, NO BARGAINING ENSUED BECAUSE OF THE APPLICATION FOR TERMINATION OF BARGAINING RIGHTS WHICH WAS ULTIMATELY DISMISSED. THREE WEEKS LATER A SECOND APPLICATION WAS FILED WITH THE BOARD FOR TERMINATION OF BARGAINING RIGHTS FOR THE SAME UNIT OF EMPLOYEES. THE INCUMBENT TRADE UNION, FOLLOWING THE DISMISSAL OF THE FIRST APPLICATION, AGAIN GAVE NOTICE OF ITS DESIRE TO MEET FOR PURPOSES OF NEGOTIATING A NEW COLLECTIVE AGREEMENT. AGAIN NO MEETINGS WERE HELD BETWEEN THE PARTIES BECAUSE OF THE SECOND APPLICATION. THE BOARD NOTED THAT JURISDICTION TO APPLY THE TRINIDAD LEASEHOLD PRINCIPLES WHERE REPRESENTATIVE APPLICATIONS (DURING THE OPEN SEASON) FOLLOWED CLOSELY ON THE HEELS OF A PRIOR DISMISSED APPLICATION HAD TO BE BASED ON SECTION 77(2)(1) (NOW SECTION 92(2)(1)) OF THE ACT. THE BOARD STATED AT P. 441:

ANY JURISDICTION WE HAVE TO REFUSE TO ENTERTAIN THIS APPLICATION MUST THEREFORE BE FOUND IN SECTION 77(2)(1) OF THE ACT. WHILE WE HAVE A DISCRETION TO REFUSE TO ENTERTAIN A NEW APPLICATION FOLLOWING THE DISMISSAL OF AN EARLIER APPLICATION, THAT DISCRETION MUST BE EXERCISED IN A JUDICIOUS MANNER. OUR DISCRETION CANNOT BE ARBITRARILY PREDETERMINED BY ADOPTING PRESENT RULES SUCH AS THE DOCTRINE THAT A PARTY IS ONLY ENTITLED TO "ONE BITE OF THE CHERRY". BEFORE OUR DISCRETION CAN BE JUDICIOUSLY EXERCISED WE MUST ASSESS ALL RELEVANT FACTS OF THE CASE.

THE BOARD WENT ON TO MAKE A FINDING THAT THE INITIAL APPLICATION WAS DISMISSED ON ACCOUNT OF "AN HONEST MISTAKE" AND THAT, IN FACT, THE TWO APPLICATIONS WERE MADE EXPEDITIOUSLY WITHOUT THE INTENTION OF INTERFERING WITH THE RESPONDENT'S BARGAINING RIGHTS. THE BOARD STATED AT P. 441:

... WE ARE OF THE VIEW THAT TO DISMISS THE INSTANT APPLICATION WOULD BE TOO HARSH A RESULT FOR THE BOARD TO ADOPT. THE MISTAKE

THAT LED TO THE DISMISSAL OF THE FIRST APPLICATION, WHILE FATAL TO THAT APPLICATION, WAS INNOCENTLY MADE. TO FIND THAT SUCH AN INNOCENT MISTAKE SHOULD DEPRIVE THE EMPLOYEES OF THE REMEDY AFFORDED BY SECTION 43 OF THE ACT IN THE ABSENCE OF EVIDENCE OF HARASSMENT OF THE RESPONDENT OR A FAILURE TO ACT EXPEDITIOUSLY, THEREBY CASSING UNDUE INTERFERENCE WITH BARGAINING, WOULD IN OUR VIEW BE A HIGH-HANDED AND ARBITRARY TREATMENT OF THE FACTS OF THIS CASE. THE MERE FACT THAT THERE HAS BEEN AN UNSUCCESSFUL APPLICATION (WHETHER IT BE FOR CERTIFICATION OR FOR TERMINATION) DOES NOT OF ITSELF PRECLUDE THE MAKING OF A SUBSEQUENT TIMELY APPLICATION. TO FIND OTHERWISE WOULD BE TANTAMOUNT TO A REFUSAL BY THE BOARD TO EXERCISE ITS DISCRETION UNDER SECTION 77(2)(1) IN A JUDICIOUS MANNER.

13. IT WOULD APPEAR FROM THE ABOVE QUOTED PASSAGE THAT THE BOARD LOOKED UPON THE DISMISSAL OF THE FIRST APPLICATION FOR TERMINATION OF BARGAINING RIGHTS, BY REASON OF THE FACT THAT THE APPLICANT FAILED TO CALL WITNESSES TO TESTIFY AS TO THE ORIGINATION OF THE STATEMENT OF DESIRE IN SUPPORT OF THE APPLICATION, AS BEING "SPECIAL CIRCUMSTANCES" WHICH WOULD FALL WITHIN THE PURVIEW OF THE BOARD'S DECISION IN THE DUPONT OF CANADA LIMITED CASE. THE PRIOR APPLICATION FOR TERMINATION OF BARGAINING RIGHTS WITH WHICH WE ARE CONCERNED IN THE INSTANT CASE, HOWEVER, WAS DISMISSED ON THE GROUNDS THAT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF THE INTERVENER IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, HAD VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISHED TO BE REPRESENTED BY THE RESPONDENT TRADE UNION. THE DISMISSAL CLEARLY WAS NOT BASED ON ANY FORM OF "TECHNICAL IRREGULARITY". RATHER, THE DISMISSAL OF THE PRIOR APPLICATION WAS BASED ON ITS MERITS. THE FACTS RELATING TO THE INSTANT APPLICATION ARE ANALOGOUS WITH THOSE BEFORE THE BOARD IN THE CANADIAN SEALRIGHT CO. LTD. CASE (SUPRA).

14. BEFORE MAKING OUR DISPOSITION WITH RESPECT TO THE INSTANT APPLICATION, WE WOULD DEAL WITH THE SUBMISSIONS OF COUNSEL FOR THE INTERVENER AS OUTLINED IN PARAGRAPH 4 OF THIS DECISION. WITH RESPECT TO THE FIRST SUBMISSION OF COUNSEL FOR THE INTERVENER, THERE IS NO QUESTION THAT THE NOTICE TO BARGAIN SERVED BY THE RESPONDENT UPON THE INTERVENER ON AUGUST 11, 1971 WAS A TIMELY NOTICE. THE FACT THAT THE RESPONDENT DID NOT GIVE NOTICE OF ITS DESIRE TO BARGAIN ON AN EARLIER DATE OR THE FACT THAT THE NOTICE WAS SERVED, WHETHER BY ACCIDENT OR DESIGN, A DAY AFTER THE INITIAL APPLICATION FOR TERMINATION WAS MADE IS OF NO CONSEQUENCE SO LONG AS IT WAS TIMELY UNDER SECTION

45 OF THE ACT. THE BOARD IS NOT CONCERNED AS TO WHY THE RESPONDENT CHOSE TO SERVE NOTICE OF ITS DESIRE TO BARGAIN UPON THE INTERVENER ON ANY PARTICULAR DATE. TO INQUIRE INTO SUCH MATTERS, IN OUR VIEW, WOULD BE AN UNWARRANTED INTERFERENCE INTO THE INTERNAL AFFAIRS OF THE TRADE UNION. THE BOARD'S SOLE CONCERN IS WHETHER OR NOT THE NOTICE WAS SERVED DURING A TIMELY PERIOD, WHICH IT CLEARLY WAS IN THE INSTANT CASE.

15. WITH RESPECT TO THE SECOND SUBMISSION OF COUNSEL FOR THE INTERVENER, THE FIRST APPLICATION FOR TERMINATION OF BARGAINING RIGHTS WAS MADE ON AUGUST 10, 1971. THE RESPONDENT FILED A REPLY IN WHICH IT ALLEGED INTER ALIA THAT THE DOCUMENT FILED IN SUPPORT OF THE APPLICATION WAS NOT VOLUNTARILY SIGNED BY THE EMPLOYEES WHOSE SIGNATURES APPEARED UPON IT. THE RESPONDENT FURTHER SUBMITTED THAT LESS THAN FIFTY PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT HAD SIGNIFIED THAT THEY NO LONGER WISHED TO BE REPRESENTED BY THE RESPONDENT. IN OTHER WORKS, BY ITS REPLY, THE RESPONDENT CLEARLY INDICATED THAT IT WAS OPPOSING THE APPLICATION. THE INTERVENER, FOR ITS PART, FILED AN INTERVENTION DATED AUGUST 18, 1971, AND THE BOARD'S DECISION OF SEPTEMBER 13, 1971 SHOWS THAT THE INTERVENER AS WELL AS THE RESPONDENT WERE REPRESENTED AT THE HEARING ON THE APPLICATION ON AUGUST 30, 1971. AS HAS BEEN STATED, THE FIRST APPLICATION WAS DISMISSED ON SEPTEMBER 13, 1971 AND THE RESPONDENT APPLIED FOR CONCILIATION SERVICES ON SEPTEMBER 16, 1971. IN LIGHT OF THE ABOVE SEQUENCE OF EVENTS, THE CONDUCT OF THE RESPONDENT IS HARDLY OPEN TO EVEN THE SUGGESTION THAT THE UNION WAS IN ANY WAY NEGLECTFUL IN PURSUING THE INTERESTS OF THE EMPLOYEES OF THE INTERVENER FOR WHICH IT HOLDS BARGAINING RIGHTS, NOTWITHSTANDING THAT THE RESPONDENT DID NOT PROPOSE ANY MEETING BETWEEN THE PARTIES. FURTHER, WE WOULD POINT OUT THAT THE INTERVENER IN NO WAY RESPONDED TO THE UNION'S NOTICE OF ITS DESIRE TO BARGAIN. IN OUR VIEW, IT WAS ENTIRELY REASONABLE FOR THE RESPONDENT NOT TO PURSUE BARGAINING FOLLOWING THE GIVING OF NOTICE PENDING A DETERMINATION BY THE BOARD ON THE TERMINATION APPLICATION. MOREOVER, WE INTERPRET THE LACK OF ANY RESPONSE ON THE PART OF THE INTERVENER AS TACIT ACQUIESCENCE IN THE DEFERMENT OF NEGOTIATIONS (SEE HOLLY ELECTRIC LTD. CASE OLRB M.R. MAY 1965 P. 136).

16. THE TRINIDAD LEASEHOLDS CASE AND SUBSEQUENT DECISIONS BASED ON ITS PRINCIPLES STAND FOR THE PROPOSITION THAT WHEN A SECOND APPLICATION FOR CERTIFICATION OR TERMINATION IS MADE UPON THE HEELS OF A PRIOR APPLICATION INVOLVING THE SAME PARTIES, IN DETERMINING WHETHER IT SHOULD REFUSE TO ENTERTAIN THE SECOND APPLICATION, THE BOARD MUST BALANCE THE RIGHT TO TEST AN INCUMBENT TRADE UNION'S STRENGTH AMONG THE EMPLOYEES IT REPRESENTS AT AN APPROPRIATE TIME AGAINST THE MAINTAINING OF CONTINUITY AND STABILITY IN AN EXISTING COLLECTIVE BARGAINING RELATIONSHIP. STATED ANOTHER WAY, ONCE A REPRESENTATION ISSUE HAS BEEN DEALT WITH ON ITS MERITS AND IN THE ABSENCE OF SPECIAL CIR-

CUMSTANCES, THEN AN INCUMBENT TRADE UNION OUGHT TO BE AFFORDED A REASONABLE OPPORTUNITY TO DEMONSTRATE, WITHOUT UNDUE IMPEDIMENT, ITS ABILITY TO BARGAIN WITH THAT EMPLOYER FOR A COLLECTIVE AGREEMENT ON BEHALF OF THOSE EMPLOYEES IT REPRESENTS.

17. IN THE INSTANT CASE, THE ORIGINAL APPLICATION TO TERMINATE THE BARGAINING RIGHTS OF THE RESPONDENT WAS DISMISSED BECAUSE THE APPLICANTS WERE UNABLE TO SATISFY THE BOARD THAT A MAJORITY OF THE EMPLOYEES IN THE BARGAINING UNIT NO LONGER WISHED TO BE REPRESENTED BY THE RESPONDENT. FOLLOWING THE GIVING OF NOTICE BY THE RESPONDENT OF ITS DESIRE TO BARGAIN, IT DID NOT TRY TO ENTER INTO ACTIVE NEGOTIATIONS WITH THE INTERVENER PENDING THE BOARD'S DISPOSITION OF THE TERMINATION APPLICATION. THE RESPONDENT, HOWEVER, WASTED NO TIME IN ASSERTING ITS BARGAINING RIGHTS WHEN THE INITIAL APPLICATION WAS DISMISSED AND IMMEDIATELY MADE A REQUEST FOR CONCILIATION SERVICES. IN OTHER WORDS, THE RESPONDENT DID EVERYTHING THAT COULD REASONABLY BE EXPECTED OF IT IN THE CIRCUMSTANCES TO MAINTAIN THE CONTINUITY OF ITS COLLECTIVE BARGAINING RELATIONSHIP WITH THE INTERVENER. WE CANNOT ACCEPT THE ARGUMENT THAT THERE HAD BEEN NO UNDUE INTERFERENCE WITH OR DISRUPTION OF BARGAINING BY REASON OF THE SECOND APPLICATION FOR TERMINATION OF BARGAINING RIGHTS. THE TWO APPLICATIONS HAVE NOT JUST HAMPERED COLLECTIVE BARGAINING ACTIVITY BETWEEN THE RESPONDENT AND THE INTERVENER. THEY HAVE EFFECTIVELY PREVENTED ANY BARGAINING TAKING PLACE BETWEEN THE PARTIES.

18. SINCE THE RESPONDENT TRADE UNION HAS NOT HAD A REASONABLE OPPORTUNITY SINCE THE FINAL DISPOSITION OF THE FIRST APPLICATION AND THE FILING OF THE SECOND APPLICATION TO BARGAIN WITH THE INTERVENER COMPANY, THE BOARD, IN THE EXERCISE OF ITS DISCRETION UNDER SECTION 92(2)(1) OF THE ACT, IS OF THE OPINION THAT IT SHOULD REFUSE TO ENTERTAIN THE INSTANT APPLICATION.

19. THE APPLICATION, ACCORDINGLY, IS DISMISSED.

DECISION OF BOARD MEMBER H. F. IRWIN: DECEMBER 13, 1971.

HAVING REGARD TO THE TRINIDAD LEASEHOLDS (CANADA) LTD. CASE, 52 CLLC ¶17,005, AND THE SUBSEQUENT RELATED DECISIONS OF THE BOARD AS SET OUT IN THE INSTANT DECISION BY ALTERNATE CHAIRMAN, J. H. BROWN, Q.C., AND BOARD MEMBER P. J. O'KEEFFE, ON THE BASIS OF THE BOARD'S ESTABLISHED POLICY I AM OBLIGED TO CONCUR IN THEIR DECISION THAT THE INSTANT APPLICATION IS UNTIMELY AND MUST BE DISMISSED.

HAVING REGARD TO THE SUBMISSIONS OF COUNSEL FOR THE INTERVENER IN THE INSTANT CASE AND HIS COMMENTS CONCERNING THE REASONS GIVEN BY THE BOARD IN DISMISSING ON SEPTEMBER 13, 1971 THE PREVIOUS APPLICATION FOR TERMINATION IN RESPECT OF THE SAME EMPLOYEES BY THE

SAME APPLICANTS, I FEEL OBLIGED TO STATE THAT I CONCUR IN THE DISSENTING DECISION OF BOARD MEMBER J. D. BELL THAT THE REVOCATIONS FILED IN THAT CASE SHOULD NOT HAVE BEEN GIVEN WEIGHT AND THEREBY ALLOWED TO CANCEL OUT PART OF THE EVIDENCE SUBMITTED BY THE APPLICANTS IN SUPPORT OF THEIR APPLICATION. LIKE BOARD MEMBER BELL, I WOULD HAVE DIRECTED A REPRESENTATION VOTE. IF THIS HAD BEEN DONE, THE PRESENT APPLICATION WOULD NOT HAVE BEEN FILED.

955-71-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ALCAN BUILDING PRODUCTS LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG FOR THE APPLICANT, DONALD F. HERSEY FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER J. D. BELL:
DECEMBER 15, 1971.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE BOARD ON SEPTEMBER 29, 1971 DIRECTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN. THE VOTE IN THIS MATTER WAS TAKEN ON OCTOBER 14, 1971. BY TELEGRAM DATED OCTOBER 14, 1971, THE APPLICANT MADE CERTAIN ALLEGATIONS CONCERNING THE CONDUCT OF THE RESPONDENT AND REQUESTED THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE BE SEALED. COUNSEL FOR THE APPLICANT BY LETTER DATED OCTOBER 20, 1971 PARTICULARIZED THE APPLICANT'S OBJECTIONS TO THE RESPONDENT'S CONDUCT AND A HEARING WAS HELD IN THIS MATTER ON DECEMBER 3, 1971 TO INQUIRE INTO THE ALLEGATIONS MADE BY THE APPLICANT WITH RESPECT TO THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE.

2. THE EVIDENCE ON WHICH THE APPLICANT RELIED CONSISTED OF TWO LETTERS SENT BY THE RESPONDENT TO THE EMPLOYEES IN THIS MATTER WHEREIN THE RESPONDENT MADE CERTAIN STATEMENTS AND EXPRESSED CERTAIN VIEWS CONCERNING THE ISSUE OF WHETHER OR NOT THE EMPLOYEES SHOULD CHOOSE THE APPLICANT AS ITS REPRESENTATIVE. THE RESPONDENT'S FIRST LETTER OF SEPTEMBER 30, 1971 FOLLOWED TWO LEAFLETS WHICH WERE DISTRIBUTED BY THE APPLICANT UNION. THE RESPONDENT'S FURTHER LETTER WHICH WAS SENT TO THE EMPLOYEES ON OCTOBER 6, 1971 WAS IN TURN FOLLOWED BY A LEAFLET FROM THE UNION DATED OCTOBER 6, 1971.

3. APART FROM THE TWO LETTERS WHICH WERE DISTRIBUTED BY THE RESPONDENT, THERE WAS NO SUGGESTION OF ANY PRIOR CONDUCT OF THE RESPONDENT, SUCH AS ATTEMPTS TO INTERFERE WITH OR TO RESTRAIN OR COERCE THE EMPLOYEES, WHICH MIGHT BE SAID TO HAVE MADE THE CONDUCT NOW COMPLAINED

OF PECULIARLY SUGGESTIVE TO THE EMPLOYEES. THE RESPONDENT CONFINED ITSELF TO EXPRESSING ITS VIEWS IN THE LETTERS OF SEPTEMBER 30 AND OCTOBER 2.

4. SINCE THE APPLICANT ENJOYS LESS THAN FIFTY PER CENT MEMBERSHIP AMONG THE EMPLOYEES OF THE RESPONDENT, THE APPLICANT'S SOLE REMEDY IN THIS CASE IS THAT A NEW REPRESENTATION VOTE BE DIRECTED BY THE BOARD. IN ORDER TO BE ENTITLED TO THIS REMEDY, THE APPLICANT MUST ESTABLISH THAT THE RESPONDENT'S CONDUCT WAS SUCH THAT IT DEPRIVED THE EMPLOYEES OF THE ABILITY TO FREELY EXPRESS THEIR TRUE WISHES IN THE REPRESENTATION VOTE THAT WAS CONDUCTED IN THIS MATTER. IN OUR VIEW, THE ONUS ON THE APPLICANT TO ESTABLISH THAT IT IS ENTITLED TO HAVE A NEW REPRESENTATION VOTE CONDUCTED WOULD BE THE SAME ONUS THAT WOULD BE ON AN APPLICANT SEEKING TO BE CERTIFIED OUTRIGHT, PURSUANT TO THE PROVISIONS OF SECTION 7(4) OF THE ACT (WHICH REMEDY, AS STATED ABOVE, IS NOT AVAILABLE TO THE APPLICANT IN THIS CASE).

5. AS STATED IN THE SAVAGE SHOES LTD. CASE 60 CLLC ¶16,178, "IN CONSIDERING OBJECTIONS TO A REPRESENTATION VOTE BASED ON THE CONDUCT OF ONE OF THE PARTIES, THIS BOARD HAS SAID TIME AND AGAIN THAT REGARD MUST BE HAD TO ALL THE CIRCUMSTANCES OF THE CASE".

6. THE FACTS OF THIS CASE CLEARLY ESTABLISHED THAT THE RESPONDENT CONFINED ITS ACTIVITIES IN THIS MATTER TO PAPER PROPAGANDA WHERE ONE PARTY MAKES A STATEMENT AND THE OTHER PARTY ATTEMPTS TO REFUTE THAT STATEMENT AND COMMENT ON IT. IN THE ABSENCE OF THREATS OR OTHER ELEMENTS OF INTIMIDATION, THE BOARD WILL NOT UNDERTAKE TO POLICE OR CENSOR THE PROPAGANDA USED BY PARTICIPANTS IN A REPRESENTATION VOTE, BUT LEAVES IT TO THE OPPOSING PARTY TO CORRECT, AND TO THE EMPLOYEES TO EVALUATE, SUCH PROPAGANDA. EXAGGERATION, INACCURACIES, PARTIAL TRUTHS, NAME-CALLING, AND FALSEHOODS, WHILE NOT CONDONED, MAY BE EXCUSED AS LEGITIMATE ELECTIONEERING CAMPAIGN PROPAGANDA PROVIDED THEY ARE NOT SO MISLEADING AS TO PREVENT THE EXERCISE OF A FREE CHOICE BY EMPLOYEES IN THE REPRESENTATION VOTE.

7. IN THE INSTANT CASE, THE PROPAGANDA WAS PUBLISHED BY THE RESPONDENT WELL IN ADVANCE OF THE TAKING OF THE REPRESENTATION VOTE AND THE APPLICANT UNION HAD AMPLE OPPORTUNITY TO ANSWER ANY STATEMENTS OR ALLEGATIONS MADE AGAINST IT. THIS CASE IS DISTINGUISHABLE FROM THE CASE WHERE AN EMPLOYEE ADDRESSES A "CAPTIVE AUDIENCE".

8. WHILE THE MATERIAL PUBLISHED BY THE RESPONDENT MAY BE OPEN TO CHALLENGE ON THE GROUNDS OF ACCURACY OR EXAGGERATION AND MAY, WHEN VIEWED BY ARDENT SUPPORTERS OF THE TRADE UNION, BE INTERPRETED AS HIGHLY OBJECTIONABLE FALSEHOODS AND NAME-CALLING, BECAUSE OF THE SENSITIVITY OF SUCH SUPPORTERS TO ANY SUCH ACTIVITY ON THE PART OF AN EMPLOYER, WE ARE OF THE VIEW, HOWEVER, THAT THESE STATEMENTS, WHEN VIEWED BY THE

AVERAGE EMPLOYEE, WOULD BE ACCEPTED AS NORMAL ELECTION PROPAGANDA TO BE EXPECTED FROM AN EMPLOYER. SUCH EMPLOYEES HAVE THE BENEFIT OF THE LEAFLETS DISTRIBUTED BY THE APPLICANT UNION WHICH COUNTER-BALANCE TO A LARGE DEGREE THE STATEMENTS MADE BY THE RESPONDENT. WE ARE OF THE VIEW THAT THE AVERAGE EMPLOYEE HAS THE MENTAL CAPACITY AND THE NECESSARY EXPERIENCE TO ASSESS THIS TYPE OF PROPAGANDA IN A PROPER WAY AND WOULD NOT BE UNDULY INFLUENCED THEREBY. THIS FACT IS APPARENTLY RECOGNIZED BY THE APPLICANT UNION AS CAN BE SEEN FROM THE MANNER IN WHICH THE LEAFLETS PREPARED BY THE UNION SET OUT THE UNION'S POSITION. THE UNION'S LEAFLETS MUST BE DESCRIBED AS FAIR COMMENT ON THE ISSUES AND ARE NOT INFLAMMATORY, ABUSIVE OR AN OVERSTATEMENT OF THE UNION'S CASE. UNION LEAFLETS OF THIS TYPE RECOGNIZE THE MENTAL CAPACITY OF THE EMPLOYEES WHOM THE UNION SEEKS TO REPRESENT AND IN EFFECT GIVE CREDIT FOR SUCH CAPACITY. HOWEVER THAT MAY BE, WE ARE OF THE VIEW THAT THE FACTS OF THIS CASE ARE SUCH THAT IT CANNOT BE FOUND THAT THE ACTIVITIES OF THE RESPONDENT HAVE DESTROYED THE ABILITY OF THE EMPLOYEES TO FREELY EXPRESS THEIR VIEWS IN THE REPRESENTATIVE VOTE THAT WAS CONDUCTED.

9. SINCE WE HAVE FOUND THAT THERE IS NOTHING BEFORE US WHICH WOULD CAUSE US TO FIND THAT THE REPRESENTATION VOTE CONDUCTED IN THIS MATTER WOULD NOT CORRECTLY REFLECT THE TRUE WISHES OF THE EMPLOYEES, THE APPLICANT'S REQUEST THAT A NEW REPRESENTATION VOTE BE CONDUCTED IN THIS MATTER IS ACCORDINGLY DENIED.

10. THE BOARD DIRECTS THE REGISTRAR TO CAUSE THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE IN THIS MATTER TO BE COUNTED AND REPORT TO THE BOARD.

DECISION OF BOARD MEMBER O. HODGES: DECEMBER 15, 1971.

I DISSENT.

1. THE LETTERS SENT OUT BY THE PLANT MANAGER WERE MAILED TO ALL EMPLOYEES, ACCORDING TO THE STATEMENT OF COUNSEL FOR THE RESPONDENT EMPLOYER. WITH REGARD TO THE MAJORITY REFERENCE OF A "CAPTIVE AUDIENCE" IN PARAGRAPH 7 OF THEIR DECISION, THE MAILING LISTS OF THE EMPLOYER REPRESENT A "CAPTIVE AUDIENCE" IN A VERY REAL SENSE. EVEN MORE THAN A PLANT MEETING, SUCH LETTERS INVOLVE WIVES AND OTHER FAMILY MEMBERS.

2. PARAGRAPH 5 OF EXHIBIT #3, THE SECOND COMPANY LETTER, REFERS TO A WAGE INCREASE AS BEING "IN THE WORKS" WITH THE SHOP COMMITTEE. THIS INTRODUCES AN ELEMENT OF COMPANY SUPPORT FOR THE SHOP COMMITTEE. ALTHOUGH NOT A CONTESTANT ON THE BALLOT, IT IS EVIDENT THAT THE SHOP COMMITTEE PERFORMS A KIND OF COLLECTIVE BARGAINING FUNCTION FOR EMPLOYEES, AND THAT A WAGE INCREASE HAS BEEN HELD UP BY THE ADVENT OF THE UNION APPLICATION FOR CERTIFICATION AND THE ENSUING VOTE ABOUT TO

BE TAKEN. THEREFORE, THE INFERENCE IS, VOTE AGAINST THE UNION AND RETAIN THE SHOP COMMITTEE TO GET THE WAGE INCREASE.

3. THE SHOP COMMITTEE ALSO GETS A SIGNIFICANT PLUG IN THE FIRST COMPANY LETTER, WHEN THE EMPLOYEES ARE REMAINDED:

WHENEVER YOU HAVE HAD INDIVIDUAL PROBLEMS WITH RESPECT TO THE ASSIGNMENT OF WORK, ALLOCATION OF OVERTIME, IMPROPER PAYMENT OF WAGES ETC. WE HAVE TRIED TO ENCOURAGE YOU TO BRING THESE COMPLAINTS AS WELL AS YOUR SUGGESTIONS FORWARD TO THE SHOP COMMITTEE. FOR EXAMPLE AN EMPLOYEE RECENTLY HAD A PROBLEM WITH HIS INCORRECT WAGES AND THIS WAS BROUGHT FORWARD BY A MEMBER OF A SHOP COMMITTEE AND CORRECTED. IN THE LIGHT OF THIS HISTORY IT IS MY HONEST OPINION THAT THERE SHOULD BE LITTLE REASON FOR YOU TO TURN TO A THIRD PARTY.

4. TAKEN TOGETHER WITH THE OTHER PARTS OF THE COMPANY LETTER, I WOULD CHARACTERIZE THE ACTION OF THE RESPONDENT EMPLOYER AS INTERFERENCE WITHIN THE MEANING OF SECTION 56 OF THE ACT.

5. I FIND THAT THE TRUE WISHES OF THE EMPLOYEES MAY HAVE BEEN UNDULY INFLUENCED AGAINST THE APPLICANT. IN THE CIRCUMSTANCES OF THIS CASE, MY DECISION IS TO ORDER A NEW REPRESENTATION VOTE.

1121-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. SWINGLINE OF CANADA LTD. (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND F. W. MURRAY.

DECISION OF THE BOARD:

DECEMBER 15, 1971.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH A PRE-HEARING REPRESENTATION VOTE WAS TAKEN ON NOVEMBER 18, 1971 AND IN WHICH THE BALLOT BOX WAS SEALED.

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4. THE RESPONDENT HAS FILED A STATEMENT OF OBJECTIONS DATED NOVEMBER 23, 1971 IN THIS MATTER WHICH READS AS FOLLOWS:

WE HEREWITH REPRESENT TO THE BOARD OUR OBJECTION TO THE FACT THAT MR. ALBERT QUINN ACTED AS A SCRUTINEER ON BEHALF OF THE APPLICANT IN THE ELECTION CONDUCTED AT RESPONDENT'S PLANT ON NOVEMBER 18, 1971. MR. QUINN WAS NOT AN EMPLOYEE OF THE RESPONDENT ON THE DATE OF THE ELECTION AND WAS CHOSEN BY APPLICANT TO ACT AS ITS SCRUTINEER DESPITE RESPONDENT'S EXPRESSED OBJECTION TO MR. QUINN'S SERVING IN THAT CAPACITY. SHOULD A MAJORITY OF THE VOTES BE CAST AGAINST THE APPLICANT IN THAT ELECTION, RESPONDENT DOES NOT REQUEST THAT THE BOARD TAKE ANY ACTION AS A RESULT OF MR. QUINN'S ACTING AS SCRUTINEER. SHOULD HOWEVER, A MAJORITY OF THE VOTES BE CAST IN FAVOR OF THE APPLICANT IN THE ELECTION, THE RESPONDENT REQUESTS THAT THE ELECTION HELD ON NOVEMBER 18, 1971 BE DECLARED A NULLITY AND THAT THE BOARD DIRECT THAT A NEW ELECTION BE HELD.

IF THE BOARD IS OF THE OPINION THAT THE ISSUE RAISED IN THIS STATEMENT CAN BEST BE RESOLVED BY MEANS OF A HEARING BEFORE THE BOARD, WE REQUEST SUCH A HEARING AFTER THE VOTES ARE COUNTED.

5. WHILE MR. QUINN WAS NOT AN EMPLOYEE OF THE RESPONDENT AT THE TIME THE REPRESENTATION VOTE WAS TAKEN, THERE WAS NOTHING TO PRECLUDE THE APPLICANT FROM APPOINTING MR. QUINN AS SCRUTINEER. THIS IS NOTHING CONTAINED IN THE ALLEGATIONS OF THE RESPONDENT WHICH, IF PROVED, WOULD CAUSE US TO FIND THAT THE REPRESENTATION VOTE CONDUCTED IN THIS MATTER WOULD NOT CORRECTLY REFLECT THE TRUE WISHES OF THE EMPLOYEES AND ACCORDINGLY THE MERE PRESENCE OF MR. QUINN AS SCRUTINEER IS NOT SUFFICIENT TO NULLIFY THE REPRESENTATION VOTE HELD IN THIS MATTER. THE OBJECTIONS OF THE RESPONDENT ARE ACCORDINGLY DISMISSED.

6. THE BOARD DIRECTS THE REGISTRAR TO CAUSE THE BALLOTS CAST BY ALL THOSE ELIGIBLE TO VOTE IN THE PRE-HEARING REPRESENTATION VOTE IN THIS MATTER TO BE COUNTED AND REPORT TO THE BOARD.

1263-71-R: SERVICE EMPLOYEES UNION - LOCAL 204 AFFILIATED WITH THE S.E.I.U., A.F. OF L., C.I.O. C.L.C. (APPLICANT) v. LEISURE WORLD NURSING HOMES LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F.W. MURRAY.

APPEARANCES AT THE HEARING: J.H. NICHOLLS FOR THE APPLICANT; G.G. SMITH AND D. MCKENZIE FOR THE RESPONDENT; W.J. HEMMERICK Q.C. FOR THE OBJECTORS.

DECISION OF THE BOARD:

DECEMBER 21, 1971.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISORS OR FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. PRIOR TO THE TERMINAL DATE OF THIS APPLICATION FOR CERTIFICATION, NAMELY NOVEMBER 24, 1971, THERE WAS FILED WITH THE BOARD TWO HANDWRITTEN STATEMENTS OF DESIRE OR PETITIONS. HOWEVER, BY LETTER DATED NOVEMBER 25, 1971, THE DEPUTY REGISTRAR ADVISED THE APPARENT REPRESENTATIVE OF THE PETITIONERS THAT SHE WAS UNABLE TO TAKE ANY ACTION WITH RESPECT TO THESE STATEMENTS OF DESIRE SINCE THEY FAILED TO DISCLOSE THE NAME OF THE EMPLOYER CONCERNED. THE FINAL PARAGRAPH OF THIS LETTER READS AS FOLLOWS:

"IF YOU WISH THE BOARD TO CONSIDER YOUR STATEMENTS OF DESIRE, YOU MUST ADVISE ME IN WRITING, OR BY TELEGRAM, OF THE NAME OF YOUR EMPLOYER ON OR BEFORE MONDAY, NOVEMBER 29, 1971. IF I HAVE NOT HEARD FROM YOU BY THAT TIME, YOUR STATEMENTS OF DESIRE WILL BE RETURNED TO YOU."

THIS SAME LETTER WAS RETURNED TO THE BOARD AND AT THE BOTTOM THEREOF APPEARS THE HANDWRITTEN NOTATION

"LEISURE WORLD HOMES
2 SUNDOWN."

THE LETTER BEARS THE BOARD'S DATE STAMP OF NOVEMBER 30, 1971. THE ENVELOPE IN QUESTION DISCLOSES THAT IT WAS MAILED BY ORDINARY MAIL ON NOVEMBER 29, 1971. BY LETTER DATED NOVEMBER 30, 1971, THE DEPUTY REGISTRAR ACKNOWLEDGED RECEIPT OF THE TWO STATEMENTS OF DESIRE AND ALSO THE RECEIPT OF THE NAME OF THE EMPLOYER.

4. AT THE HEARING OF THIS MATTER ON DECEMBER 1, 1971, THE APPLICANT SUBMITTED THAT UNDER THESE CIRCUMSTANCES, THE STATEMENTS OF DESIRE ARE UNTIMELY AND SHOULD NOT BE ENTERTAINED. THE BOARD, RESERVED

ITS DECISION UPON THE TIMELINESS ISSUE, PENDING RECEIPT OF WRITTEN REPRESENTATIONS FROM THE PARTIES HEREIN AND PROCEEDED TO HEAR EVIDENCE COVERING THE ORIGINATION, PREPARATION AND CIRCULATION OF THESE DOCUMENTS.

5. THE PRINCIPLES APPLICABLE TO THE FILING OF A STATEMENT OF DESIRE OR PETITION WHICH OMITS TO INDICATE THE NAME OF THE EMPLOYER, APPEARS IN THE ELLIOT RUBBER & PLASTIC LTD. CASE OLRB M.R. MARCH 1969, PAGE 1273 WHEREIN AT PAGE 1274, IT IS STATED:

"THE PETITION, AS NOTED, WAS FILED WITHIN THE TIME PRESCRIBED AND WAS DEFECTIVE ONLY IN THAT THE NAME OF THE EMPLOYER HAD BEEN OMITTED. THIS IS CLEARLY NOT A REQUIREMENT GOING TO THE SUBSTANCE OF THE MATTER. IT IS AN ADMINISTRATIVE NECESSITY HAVING NOTHING TO DO WITH THE MERITS AND IS DESIGNED TO ENABLE THE REGISTRAR TO CAUSE, IN THIS CASE, THE PETITION TO BE FILED WITH THE CORRECT APPLICATION. THE TIME SET FOR THE RETURN OF THE INFORMATION BY THE REGISTRAR HEREIN, UNDER AUTHORITY FROM THE BOARD, IS NOT AN EXTENSION OF THE TERMINAL DATE, WITH WHICH THE PETITIONERS HAD COMPLIED, BUT SIMPLY A LIMITED OPPORTUNITY AFFORDED THE PETITIONERS TO PROPERLY IDENTIFY FOR THE BOARD THE CASE TO WHICH THEY INTENDED THE DOCUMENT IN QUESTION TO APPLY. THE PROCEDURE ADOPTED BY THE BOARD IN THIS INSTANCE IS AMPLY PROVIDED FOR IN THE PROVISIONS OF SECTIONS 57(2) AND 58 OF THE BOARD'S RULES OF PROCEDURE...."

6. IN ITS WRITTEN REPRESENTATIONS TO THE BOARD DATED DECEMBER 6, 1971, THE APPLICANT CITES THE QUALITY KNITTING LIMITED CASE OLRB M. R. JULY 1970, PAGE 508, AS ONE OF THE CASES IN SUPPORT OF ITS SUBMISSION THAT THE STATEMENTS OF DESIRE IN THESE CIRCUMSTANCES NOT BE ACCORDED VALIDITY. IN OUR OPINION, THE FACTS OF THAT CASE ARE CLEARLY DISTINGUISHABLE FROM THOSE IN THE INSTANT CASE. IN THE FORMER CASE, THE PETITION WAS ACTUALLY RETURNED TO THE APPARENT SPOKESMAN BY THE REGISTRAR UPON THE FORMER'S FAILURE TO SUPPLY THE NAME OF THE EMPLOYER BY THE JULY 14 DATE ORIGINALLY SET BY THE REGISTRAR. THUS THE BOARD REFUSED TO ENTERTAIN THE PETITION, WHEN THE SPOKESMAN ATTEMPTED TO PERSONALLY FILED THE DOCUMENT WITH THE BOARD AT THE HEARING. IN THE INSTANT CASE, THE STATEMENTS OF DESIRE WERE NEVER RETURNED TO THE APPARENT REPRESENTATIVE. MOREOVER THE PARTIES ON NOVEMBER 30, 1971, WERE PERSONALLY SERVED WITH COPIES OF THE RELEVANT PORTIONS OF THESE STATEMENTS OF DESIRES.

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1275-71-JD: DUNKER CONSTRUCTION LIMITED (COMPLAINANT) V. LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1081, THE GRAND RIVER VALLEY DISTRICT COUNCIL OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA ON BEHALF OF LOCAL UNIONS 498, 949, 1940 AND 2173 (RESPONDENTS).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND F. W. MURRAY.

APPEARANCES AT THE HEARING: R. D. PERKINS AND DONALD HENDERSON FOR THE COMPLAINANT; M. REILLY AND LAVERNE SCHERTZBERG FOR LABOURERS LOCAL 1081; NO ONE FOR CARPENTERS LOCALS 498, 949, 1940 AND 2173.

DECISION OF THE BOARD: DECEMBER 22, 1971.

1. THIS IS A COMPLAINT MADE UNDER SECTION 81 OF THE LABOUR RELATIONS ACT.
2. THE WORK IN DISPUTE BETWEEN THE RESPONDENT TRADE UNIONS CONSISTS OF THE CONSTRUCTION AND ERECTION OF FORMS FOR CONCRETE CURBS, RETAINING WALLS AND OTHER CONCRETE STRUCTURES IN CONNECTION WITH THE COMPLAINANT'S NEW DUNDEE MILL DAM RESTORATION PROJECT IN THE COUNTY OF WATERLOO.
3. THE EVIDENCE ESTABLISHED THAT THE COMPLAINANT HAS EMPLOYED LABOURERS EXCLUSIVELY IN WORK OF THE SAME NATURE AS THE DISPUTED WORK FOR ABOUT TEN YEARS AND UNDER A COLLECTIVE AGREEMENT WITH THE LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1081 FOR MORE THAN ONE YEAR. THE COLLECTIVE AGREEMENT BETWEEN THE COMPLAINANT AND LOCAL 1081 CONTAINS A SPECIFIC REFERENCE TO THE DISPUTED WORK.
4. IT HAS BEEN THE AREA PRACTICE UNDER COLLECTIVE AGREEMENTS WITH LOCAL 1081 FOR SEWER AND WATERMAIN CONTRACTORS AND FOR ROAD BUILDING CONTRACTORS TO EMPLOY LABOURERS ON WORK OF THE SAME NATURE AS THE DISPUTED WORK. THE LABOURERS EMPLOYED USE SIMPLE CARPENTRY TOOLS AND CAN BE TRAINED IN THE WORK IN ABOUT ONE MONTH'S TIME.
5. THE EVIDENCE FURTHER ESTABLISHED THAT IT IS MORE ECONOMICAL FOR SUCH CONTRACTORS TO USE LABOURERS RATHER THAN CARPENTERS AND THE SAFETY RECORDS OF THE COMPLAINANT AND OTHER COMPANIES IN THE AREA USING LABOURERS ON SUCH WORK IS EXCELLENT.
6. IN VIEW OF THE UNDISPUTED EVIDENCE RELATING TO PAST PRACTICE, THE FACTORS OF SKILL, ECONOMY, EFFICIENCY AND SAFETY, THE BOARD FINDS THAT THE WORK IN DISPUTE WHICH IS THE SUBJECT MATTER OF THE INSTANT COMPLAINT FALLS WITHIN THE JURISDICTION OF THE LABOURERS.

7. THE BOARD ACCORDINGLY DIRECTS THAT THE COMPLAINANT DUNKER CONSTRUCTION LIMITED ASSIGN THE WORK INVOLVED IN THE CONSTRUCTION AND ERECTION OF FORMS, RETAINING WALLS AND OTHER CONCRETE STRUCTURES IN CONNECTION WITH ITS NEW DUNDEE DAM RESTORATION PROJECT IN THE COUNTY OF WATERLOO TO EMPLOYEES WHO ARE REPRESENTED BY LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1081.

1252-71-R: LOCAL UNION 742 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) v. HYDRO-ELECTRIC COMMISSION OF THE CITY OF PEMBROKE (RESPONDENT) v. EMPLOYEE (OBJECTOR).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND H. F. IRWIN.

APPEARANCES AT THE HEARING: J. A. SHIRKIE FOR THE APPLICANT; J. C. MURRAY AND MURRAY MOORE FOR THE RESPONDENT; NO ONE APPEARING FOR THE OBJECTOR.

DECISION OF THE BOARD: DECEMBER 29, 1971.

1. THE NAME "PEMBROKE HYDRO ELECTRIC COMMISSION" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "HYDRO-ELECTRIC COMMISSION OF THE CITY OF PEMBROKE."

2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

3. IN SUPPORT OF THIS APPLICATION, THE APPLICANT FILED AS EVIDENCE OF MEMBERSHIP, SEPARATE APPLICATIONS FOR MEMBERSHIP AND RECEIPTS. ALTHOUGH THE LOCAL NUMBER OF THE APPLICANT, NAMELY LOCAL UNION NO. 742, APPEARS ON EACH OF THE APPLICATION FOR MEMBERSHIP CARDS, THE SEPARATE RECEIPTS ACCOMPANYING EACH CARD MERELY REFER TO THE "I. B. OF E. W." COUNSEL FOR THE RESPONDENT SUBMITS THAT, UNDER THESE CIRCUMSTANCES, THE EVIDENCE OF MEMBERSHIP SHOULD NOT BE ACCEPTED BY THE BOARD SINCE THE APPLICANT LOCAL UNION IS NOT SHOWN AS THE RECIPIENT OF THE DOLLAR PAYMENT.

4. UPON A REVIEW OF THE CONTENTS OF BOTH OF THESE DOCUMENTS, WHICH INTER ALIA, REVEALS THAT THE CARD WAS SIGNED AND THE RECEIPT COUNTERSIGNED BY THE PAYOR ON THE SAME DATE, WE ARE SATISFIED THAT THE BOARD'S REQUIREMENTS CONCERNING EVIDENCE OF MEMBERSHIP HAVE BEEN MET.

5. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT PEMBROKE SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER

WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

6. FOR THE PURPOSE OF CLARITY, THE BOARD NOTES THAT WILLIAM SMITH, CLASSIFIED BY THE RESPONDENT AS "METER-READER" AND GEORGE TAYLOR CLASSIFIED BY THE RESPONDENT AS SUB-STATION SUPERINTENDENT", ARE EXCLUDED FROM THE BARGAINING UNIT.

7. MR. D. K. AYNLEY, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT BACK TO THE BOARD ON:

(A) THE DUTIES AND RESPONSIBILITIES OF WILLIAM SACK, CLASSIFIED BY THE RESPONDENT AS "LINE FOREMAN";

(B) THE EMPLOYMENT STATUS, AS OF THE DATE OF THE FILING OF THIS APPLICATION, OF DENNIS SCHROEDER, CLASSIFIED BY THE RESPONDENT AS "HANDYMAN."

1100-71-R: THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA - LOCAL 628 (APPLICANT) V. ALGOMA MAINTENANCE & SERVICES LIMITED (RESPONDENT) V. UNITED STEELWORKERS OF AMERICA (INTERVENER).

BEFORE: R.A. FURNESS, VICE CHAIRMAN AND BOARD MEMBERS E. BOYER AND H.F. IRWIN.

APPEARANCES AT THE HEARING: RAYMOND KOSKIE, JEFFREY SLOPEN AND G. MESERVIER FOR THE APPLICANT; J. O'DONOGHUE FOR THE RESPONDENT; D. STOREY AND A. DESBIENS FOR THE INTERVENER.

DECISION OF THE BOARD: DECEMBER 28, 1971.

1. THE INTERVENTION OF THE INTERVENER IS WITHDRAWN BY LEAVE OF THE BOARD.

2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

3. THE BOARD FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 108 OF THE LABOUR RELATIONS ACT.

4. THE RESPONDENT RAISED TWO DOCUMENTS AS A BAR TO THIS APPLICATION FOR CERTIFICATION. FIRSTLY, A RECOGNITION AGREEMENT DATED MARCH 16, 1971 BETWEEN THE RESPONDENT AND THE INTERVENER AND, SECONDLY, AN

ALLEGED COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER
EFFECTIVE MAY 1, 1971.

5. IN THE RECOGNITION AGREEMENT THE RESPONDENT RECOGNIZED THE INTERVENER AS THE BARGAINING AGENT FOR ALL OF ITS EMPLOYEES IN THE PROVINCE OF ONTARIO. THIS AGREEMENT WAS MADE EFFECTIVE AS OF MARCH 1, 1971. THE RECOGNITION AGREEMENT FURTHER RECITES THAT THE RESPONDENT RECOGNIZED THE INTERVENER AS THE REPRESENTATIVE OF ALL OF ITS EMPLOYEES EXCEPT SUPERINTENDENTS, MANAGERS, AND ALL THOSE EMPLOYEES UNDER CONTRACT PRESENTLY WITH ANOTHER UNION. THE RESPONDENT FURTHER AGREED TO ENTER INTO NEGOTIATIONS IMMEDIATELY FOR THE PURPOSE OF SIGNING A COLLECTIVE BARGAINING AGREEMENT WITHIN THE NEXT SIXTY (60) DAYS IN THE PROVINCE OF ONTARIO.

6. THE ALLEGED COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND INTERVENER IS DATED AND EFFECTIVE ON MAY 1, 1971. IN ARTICLE 1.01 OF THIS ALLEGED COLLECTIVE AGREEMENT THE RESPONDENT RECOGNIZED THE INTERVENER AS THE SOLE AND EXCLUSIVE BARGAINING AGENT FOR ALL ITS EMPLOYEES IN THE PROVINCE OF ONTARIO. THIS ALLEGED COLLECTIVE AGREEMENT WHICH, AS STATED EARLIER, BECAME EFFECTIVE ON MAY 1, 1971 WAS TO CONTINUE FOR A PERIOD OF TWO YEARS.

7. THIS APPLICATION FOR CERTIFICATION WAS FILED ON OCTOBER 6, 1971. THE APPLICANT ALLEGED THAT THE SAID ALLEGED COLLECTIVE AGREEMENT WAS SECURED AS THE RESULT OF VOLUNTARY RECOGNITION BEING GRANTED BY THE RESPONDENT TO THE INTERVENER, ALLEGED THAT THE SAID ALLEGED COLLECTIVE AGREEMENT DID NOT CONSTITUTE A BAR TO THIS APPLICATION SINCE AT THE TIME THE SAID RECOGNITION AGREEMENT AND THE SAID ALLEGED COLLECTIVE AGREEMENT WERE ENTERED INTO THE INTERVENER WAS NOT ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT CONTAINED IN THE SAID ALLEGED COLLECTIVE AGREEMENT. THE APPLICANT RELIED ON SECTION 52 OF THE LABOUR RELATIONS ACT AND REQUESTED THE BOARD TO ISSUE THE APPROPRIATE DECLARATION THEREUNDER. IN ADDITION, THE APPLICANT FILED ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT IN CONNECTION WITH THE EVIDENCE OF MEMBERSHIP SECURED BY THE INTERVENER IN THE COURSE OF ITS ENTERING INTO THE SAID ALLEGED COLLECTIVE AGREEMENT WITH THE RESPONDENT. FURTHER, THE APPLICANT REQUESTED THAT THE BOARD ADD THREE OTHER COMPANIES AS PARTIES TO THIS APPLICATION PURSUANT TO SECTION 54 OF THE BOARD'S RULES OF PROCEDURE.

8. THE APPLICANT, HOWEVER, INFORMED THE BOARD AT THE HEARING THAT IN THE EVENT THAT THE BOARD, HAVING REGARD TO THE EVIDENCE BEFORE IT AND TO THE REPRESENTATIONS OF THE PARTIES, ISSUED A DECLARATION UNDER SECTION 52 OF THE LABOUR RELATIONS ACT, IT DID NOT WISH TO PURSUE ITS ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT AGAINST THE RESPONDENT AND THE INTERVENER OR REQUEST THAT THE SAID ADDITIONAL THREE COMPANIES BE ADDED AS PARTIES TO THIS APPLICATION.

9. THE BOARD PROCEEDED TO HEAR EVIDENCE AND REPRESENTATIONS FROM THE PARTIES WITH RESPECT TO THE APPLICANT'S REQUEST FOR A DECLARATION UNDER SECTION 52 OF THE LABOUR RELATIONS ACT. MR. ALBERT DESBIENS, A REPRESENTATION OF THE INTERVENER WAS CALLED AS A WITNESS BY THE RESPONDENT. MR. DESBIENS TESTIFIED THAT SOME OF THE RESPONDENT'S EMPLOYEES CAME TO SEE HIM ABOUT ORGANIZING THEM DURING THE EARLY PART OF 1971. MEETINGS WERE HELD BETWEEN THE INTERVENER AND SOME OF THE EMPLOYEES OF THE RESPONDENT. APPLICATION CARDS FOR MEMBERSHIP IN THE INTERVENER WERE SIGNED AT VARIOUS TIMES AND MR. DESBIENS MET A MR. SAMMS WHO WAS A REPRESENTATIVE OF THE RESPONDENT. WHEN THE RECOGNITION AGREEMENT WAS SIGNED ON MARCH 16, 1971, THE INTERVENER DID NOT HAVE ANY EMPLOYEES OF THE RESPONDENT AS MEMBERS. HOWEVER, IT APPEARS THAT ON APRIL 15, 1971, THE INTERVENER SIGNED UP APPROXIMATELY 19 OF THE RESPONDENT'S EMPLOYEES AS MEMBERS.

10. MR. DESBIENS TESTIFIED THAT THERE WERE APPROXIMATELY TWENTY-TWO PERSONS IN THE EMPLOY OF THE RESPONDENT DURING THE MIDDLE OF APRIL, 1971. HOWEVER, HE DID NOT KNOW THE NUMBER OF EMPLOYEES OF THE RESPONDENT EMPLOYED ON MAY 1, 1971, THE DATE ON WHICH THE ALLEGED COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER WAS SIGNED.

11. THE EVIDENCE BEFORE THE BOARD ESTABLISHED ONLY THAT ON APRIL 15, 1971, THE INTERVENER REPRESENTED APPROXIMATELY NINETEEN OUT OF TWENTY-TWO EMPLOYEES IN THE SUDBURY AREA. THERE WAS NO EVIDENCE BEFORE THE BOARD IN THIS APPLICATION REGARDING, EITHER, THE NUMBER OF JOBS IN WHICH THE RESPONDENT WAS ENGAGED WITHIN THE PROVINCE OF ONTARIO ON OR ABOUT MAY 1, 1971, OR, THE NUMBER OR IDENTITY OF THE EMPLOYEES, IF ANY, OF THE RESPONDENT ON OR ABOUT MAY 1, 1971.

12. HAVING REGARD TO THE EVIDENCE BEFORE IT THE BOARD FINDS THAT THE PARTIES TO THE ALLEGED COLLECTIVE AGREEMENT, NAMELY, THE RESPONDENT AND THE INTERVENER, HAVE NOT ESTABLISHED THAT THE INTERVENER WAS ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT DEFINED IN THE ALLEGED COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER AT THE TIME THE AGREEMENT WAS ENTERED INTO. THE BOARD ACCORDINGLY DECLARES THAT THE INTERVENER WAS NOT, AT THE TIME THE ALLEGED COLLECTIVE AGREEMENT WAS ENTERED INTO, ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT. THE ALLEGED COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER IS THEREFORE NOT A BAR TO THIS APPLICATION FOR CERTIFICATION.

13. HAVING REGARD TO THIS DECLARATION BY THE BOARD IT IS NOT NECESSARY FOR THE BOARD EITHER TO INQUIRE INTO THE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT FILED BY THE APPLICANT AGAINST THE RESPONDENT IN THE INTERVENER OR TO CONSIDER THE REQUEST OF THE APPLICANT TO HAVE THREE OTHER COMPANIES MADE PARTIES TO THIS APPLICATION PURSUANT TO SECTION 54 OF THE BOARD'S RULES OF PROCEDURE.

14. MR. N. J. HARPER, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON:

- (A) THE LIST OF PLUMBERS, PLUMBERS' APPRENTICES, PIPEFITTERS AND PIPEFITTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT ON THE DATE OF THE MAKING OF THIS APPLICATION, AND,
- (B) THE LOCATION OR LOCATIONS OF THE JOB OR JOBS ON WHICH SUCH PERSONS WERE EMPLOYED BY THE RESPONDENT ON THE DATE OF THE MAKING OF THIS APPLICATION.

1099-71-R: LUMBER & SAWMILL WORKERS UNION, LOCAL 2537, THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. WHOLESALE HOMES LIMITED (RESPONDENT).

- AND -

1113-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1036 (APPLICANT) v. WHOLESALE HOMES LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: T. G. HARKNESS FOR CARPENTERS LOCAL 2537; MICHAEL J. REILLY FOR LABOURERS LOCAL 1036; J. B. NOONAN AND A. MEIKLEHAM FOR THE RESPONDENT.

DECISION OF THE BOARD: DECEMBER 30, 1971.

1. THIS IS AN APPLICATION FOR CERTIFICATION. THE BOARD'S DECISION IN THIS MATTER DATED OCTOBER 13, 1971 READS AS FOLLOWS:

- 1. THE BOARD DIRECTS THAT THESE APPLICATIONS BE CONSOLIDATED.
- 2. THE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1036 APPLIED ON OCTOBER 12, 1971 TO BE CERTIFIED AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT AT BLIND RIVER WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1036 DID NOT REQUEST THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN. IN AN EARLIER APPLICATION MADE ON

OCTOBER 7, 1971, LUMBER & SAWMILL WORKERS UNION, LOCAL 2537, THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR THE SAME EMPLOYEES WITH WHOM WE ARE HERE CONCERNED (BOARD FILE NO. 1099-71-R). THE TERMINAL DATE FIXED FOR THAT APPLICATION IS OCTOBER 18, 1971.

3. SINCE THE INSTANT APPLICATION WAS MADE PRIOR TO THE TERMINAL DATE OF THE EARLIER APPLICATION, THE BOARD WILL TREAT THE INSTANT APPLICATION AS HAVING BEEN MADE ON THE DATE OF THE MAKING OF THE ORIGINAL APPLICATION, I.E. OCTOBER 7, 1971, PURSUANT TO THE PROVISIONS OF SECTION 92(3)(A). AGAIN, SINCE THE APPLICANT IN THE EARLIER APPLICATION REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN, THE BOARD DIRECTS THAT MR. M. F. NEAVE, THE EXAMINER APPOINTED IN THE EARLIER APPLICATION, SERVE NOTICE OF HIS PRE-HEARING VOTE MEETING ON LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1036 AND THAT LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1036 BE PERMITTED TO ATTEND AND PARTICIPATE AT THE PRE-HEARING VOTE MEETING. THE BOARD DIRECTS THE REGISTRAR TO FIX THE DATE OF OCTOBER 22, 1971 AS THE TERMINAL DATE OF THIS APPLICATION AND FURTHER DIRECTS THE REGISTRAR TO EXTEND THE TERMINAL DATE OF THE EARLIER APPLICATION TO OCTOBER 22, 1971, AND TO PROCESS THE TWO APPLICATIONS TOGETHER.

2. THE APPLICATIONS OF THE APPLICANTS WERE ACCORDINGLY PROCESSED AS A PRE-HEARING REPRESENTATION VOTE. THE NOTICE TO EMPLOYEES OF APPLICATION AND REQUEST FOR PRE-HEARING VOTE (FORM 6) WAS GIVEN TO THE EMPLOYEES OF THE RESPONDENT. FORM 6 CONTAINS NO INVITATION TO THE RESPONDENT'S EMPLOYEES TO INTERVENE OR FILE A STATEMENT OF OBJECTIONS TO THE APPLICATION.

3. FOLLOWING THE PRE-HEARING VOTE MEETING CONVENED BY THE BOARD'S EXAMINER AT WHICH BOTH APPLICANTS AND THE RESPONDENT WERE REPRESENTED, THE BOARD, BY ITS DECISION DATED NOVEMBER 3, 1971, DIRECTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN AND THAT THE VOTERS BE GIVEN A CHOICE BETWEEN THE TWO APPLICANT UNIONS.

4. BY LETTER DATED NOVEMBER 10, 1971, THE RESPONDENT REQUESTED THE BOARD TO RECONSIDER ITS DECISION AND DIRECT THAT THE BALLOT BE CHANGED IN ORDER TO OFFER THE EMPLOYEES A CHOICE OF "NO TRADE UNION" IN ADDITION TO THE CHOICE BETWEEN THE TWO APPLICANT UNIONS.

5. BY DECISION DATED NOVEMBER 17, 1971, THE BOARD DIRECTED THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE IN THIS MATTER BE SEALED AND FURTHER DIRECTED THE REGISTRAR TO CAUSE THIS MATTER TO BE LISTED FOR HEARING FOLLOWING THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE TO INQUIRE INTO THE ISSUES RAISED BY THE RESPONDENT IN ITS LETTER OF NOVEMBER 10, 1971.

6. AT THE HEARING ON DECEMBER 29, 1971, THE RESPONDENT ARGUED THAT THE BOARD SHOULD EXERCISE ITS POWERS UNDER SECTION 92(6) OF THE ACT AND DIRECT A NEW REPRESENTATION VOTE WHEREIN THE EMPLOYEES WOULD BE OFFERED THE ADDITIONAL CHOICE OF "NO TRADE UNION" ON THE BALLOT.

7. SECTION 92(6)(A) OF THE ACT READS AS FOLLOWS:

WHERE, IN THE TAKING OF A REPRESENTATION VOTE, THE BOARD DETERMINES THAT THE EMPLOYEES ARE TO BE GIVEN A CHOICE BETWEEN TWO OR MORE TRADE UNIONS,

(A) THE BOARD MAY INCLUDE ON A BALLOT A CHOICE INDICATING THAT AN EMPLOYEE DOES NOT WISH TO BE REPRESENTED BY A TRADE UNION;

8. HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES, WE FIND THAT THIS IS A CASE WHERE THE BOARD SHOULD EXERCISE ITS POWERS UNDER SECTION 92(6)(A) AS REQUESTED BY THE RESPONDENT. IN ARRIVING AT THIS DECISION, THE BOARD NOTES THAT THE FORM OF BALLOT WHICH WAS USED IN THE VOTE WHICH WAS CONDUCTED ON NOVEMBER 19, 1971 IN THIS MATTER DOES NOT AFFORD THE EMPLOYEES ALL THE CHOICES THAT SHOULD BE OPEN TO THEM. THIS IS NOT AN APPLICATION WHERE ONE TRADE UNION IS ATTEMPTING TO DISPLACE ANOTHER TRADE UNION. IN THAT SITUATION, DIFFERENT CONSIDERATIONS APPLY. IN THE INSTANT CASE, THE EMPLOYEES ARE NOT PRESENTLY REPRESENTED BY ANY TRADE UNION AND THEY MUST ACCORDINGLY DECIDE WHETHER THEY WISH TO BE REPRESENTED BY A TRADE UNION AND IF THE EMPLOYEES DECIDE THAT THEY WISH SUCH REPRESENTATION THE EMPLOYEES MUST THEN DECIDE WHICH OF THE TWO COMPETING APPLICANT UNIONS THEY WISH TO REPRESENT THEM. HOWEVER, IF THE EMPLOYEES DECIDE THEY DO NOT WISH TO BE REPRESENTED BY ANY TRADE UNION, THERE IS NO WAY THAT SUCH A DESIRE CAN BE INDICATED ON THE BALLOT THAT WAS USED IN THE VOTE THAT WAS TAKEN ON NOVEMBER 19TH. IF SOME EMPLOYEES DID NOT WISH TO BE REPRESENTED BY EITHER TRADE UNION THEY MIGHT HAVE REFRAINED FROM CASTING A BALLOT. HOWEVER, THAT ACTION WOULD BE A FUTILE GESTURE SINCE A UNION NEED ONLY OBTAIN A MAJORITY OF THE BALLOTS CAST IN ORDER TO WIN THE VOTE.

9. IF THE BOARD HAD POSTPONED THE LABOURERS' APPLICATION PURSUANT TO THE PROVISIONS OF SECTION 92(3)(B) UNTIL AFTER THE CARPENTERS'

VOTE WAS CONDUCTED, THE BALLOT ON THE CARPENTERS' VOTE WOULD HAVE OFFERED THE EMPLOYEES AN OPPORTUNITY TO INDICATE THAT THEY DID NOT WISH TO BE REPRESENTED BY THE CARPENTERS. THAT OPPORTUNITY SHOULD THEREFORE NOT HAVE BEEN DENIED THE EMPLOYEES MERELY BECAUSE THE TWO APPLICATIONS WERE CONSOLIDATED BY THE BOARD'S DECISION OF OCTOBER 13, 1971.

10. AGAIN, THE FACT THAT THE RESPONDENT RATHER THAN THE EMPLOYEES HAS REQUESTED THAT A THIRD CHOICE BE PROVIDED ON THE BALLOT DOES NOT MATERIALLY AFFECT THE ISSUE. THE NOTICE TO EMPLOYEES (FORM 6) DOES NOT PROVIDE AN OPPORTUNITY TO THE EMPLOYEES TO MAKE REPRESENTATIONS ON THE FORM OF THE BALLOT TO BE USED IN THE VOTE OR TO OTHERWISE PARTICIPATE IN THE ARRANGEMENTS FOR THE VOTE. WHERE AN OPPORTUNITY IS NOT PROVIDED EMPLOYEES TO PARTICIPATE AS PARTIES AND WHERE, AS IN THIS CASE, TWO UNIONS HAVE APPLIED TO REPRESENT EMPLOYEES WHO ARE NOT CURRENTLY REPRESENTED BY ANY TRADE UNION, THE BOARD SHOULD FORMULATE THE BALLOT IN ORDER TO OFFER THE VOTERS AN OPPORTUNITY TO EXPRESS THEIR WISHES WITH RESPECT TO THE QUESTION WHETHER THEY WISH NO TRADE UNION TO REPRESENT THEM.

11. SINCE THE BALLOT USED IN THE REPRESENTATION VOTE WHICH WAS CONDUCTED IN THIS MATTER DID NOT AFFORD THE OPPORTUNITY TO THE VOTERS TO CHOOSE "NO TRADE UNION", THE BOARD ACCORDINGLY DIRECTS THAT THE REPRESENTATION VOTE WHICH WAS HELD ON NOVEMBER 19, 1971 BE SET ASIDE AND THE BALLOTS CAST IN THAT REPRESENTATION VOTE BE DESTROYED.

12. IT APPEARS TO THE BOARD ON AN EXAMINATION OF THE RECORDS OF EACH OF THE APPLICANTS AND THE RECORDS OF THE RESPONDENT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY HEREINAFTER DESCRIBED WERE MEMBERS OF EACH OF THE APPLICANTS AT THE TIME THE APPLICATION WAS MADE.

13. THE BOARD DIRECTS THAT A NEW REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE FOLLOWING VOTING CONSTITUENCY:

ALL EMPLOYEES OF THE RESPONDENT AT BLIND RIVER,
SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK
OF FOREMAN, OFFICE AND SALES STAFF.

14. ALL EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY ON THE 22ND DAY OF OCTOBER, 1971 WHO HAVE NOT VOLUNTARILY TERMINATED THEIR EMPLOYMENT OR WHO HAVE NOT BEEN DISCHARGED FOR CAUSE BETWEEN THE 22ND DAY OF OCTOBER, 1971 AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

15. THE BOARD DIRECTS THAT ALBERT BORDELEAU, JOHN DEROSBIE, GARY LAMORIE, ROMEO NADON AND RONALD WATERS BE PERMITTED TO VOTE AND THEIR BALLOTS BE SEGREGATED AND NOT COUNTED PENDING A DECISION BY THE

BOARD ON A COMPLAINT MADE PURSUANT TO THE PROVISIONS OF SECTION 79 OF THE ACT WITH RESPECT TO THEIR TERMINATION BY THE RESPONDENT.

16. THE BOARD FURTHER DIRECTS THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE SHALL BE SEALED AND THAT THE BALLOTS SHALL NOT BE COUNTED PENDING A FURTHER DIRECTION BY THE BOARD.

17. VOTERS WILL BE GIVEN A CHOICE BETWEEN LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1036, AND LUMBER & SAWMILL WORKERS UNION, LOCAL 2537, THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA AND NO TRADE UNION.

18. THE MATTER IS REFERRED TO THE REGISTRAR.

1135-71-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. NORESCO MANUFACTURING CO. LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: R. RUSSELL AND GEORGE STEVENS FOR THE APPLICANT; F. R. VON VEH AND J. BALLAUFF FOR THE RESPONDENT; WALTER R. STEVENSON FOR THE OBJECTORS.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER P. J. O'KEEFFE: DECEMBER 28, 1971.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

. . .

3. HAVING REGARD TO THE EVENTS WHICH IMMEDIATELY PRECEDED THE ORIGINATION OF THE DOCUMENT FILED IN OPPOSITION TO THIS APPLICATION AND IN PARTICULAR THE MEETING CONDUCTED BY THE RESPONDENT WHEREIN THE MANAGING DIRECTOR OF THE RESPONDENT SUGGESTED TO THE EMPLOYEES THAT A PLANT COMMITTEE MIGHT BETTER SERVE THE INTERESTS OF THE EMPLOYEES RATHER THAN THE APPLICANT UNION AND ALSO INTIMATED THAT BECAUSE OF LOSSES ALREADY SUFFERED BY THE RESPONDENT COMPANY THE DEMANDS OF THE APPLICANT UNION MIGHT CAUSE THE COMPANY TO CLOSE ITS DOORS, AND THE FACT THAT THE RESPONDENT HAS ALSO INTERVENED IN THE FREE CHOICE BY THE EMPLOYEES OF A TRADE UNION BY CONDUCTING A VOTE OF THE EMPLOYEES WHEREIN THE EMPLOYEES WERE ASKED TO INDICATE WHETHER THEY WISHED TO BE REPRESENTED BY THE TRADE UNION, ALL OF WHICH EVENTS WERE IMMEDIATELY FOLLOWED BY

THE CIRCULATION OF A DOCUMENT IN OPPOSITION TO THE APPLICANT UNION, THE BOARD IS SATISFIED THAT THE TRUE WISHES OF THE EMPLOYEES ARE NOT LIKELY TO BE DISCLOSED BY A REPRESENTATION VOTE CONDUCTED BY THE BOARD. THE BOARD ACCORDINGLY FINDS THAT THE APPLICANT IS ENTITLED TO THE RELIEF AFFORDED BY SECTION 7(4) OF THE ACT.

4. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON OCTOBER 27, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

5. HAVING REGARD FOR THE PROVISIONS OF SECTION 7(4) OF THE ACT, A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER J. D. BELL: DECEMBER 28, 1971.

I DISSENT. I WOULD HAVE GIVEN EFFECT TO THE DOCUMENT FILED IN OPPOSITION TO THIS APPLICATION SINCE THERE WAS NO EVIDENCE THAT MANAGEMENT PARTICIPATED IN ITS PREPARATION OR CIRCULATION AND I WOULD ACCORDINGLY HAVE DIRECTED A REPRESENTATION VOTE BE CONDUCTED IN THIS MATTER.

1354-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. MATTHEWS GROUP LIMITED (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS J. D. BELL AND E. BOYER.

APPEARANCES AT THE HEARING: W. W. LIPPETT FOR THE APPLICANT; ROBERT B. LIVINGSTONE AND D. A. THEAKER FOR THE RESPONDENT.

DECISION OF THE BOARD: DECEMBER 30, 1971.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

2. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 108 OF THE LABOUR RELATIONS ACT.

3. IN THIS APPLICATION FOR CERTIFICATION THE APPLICANT IS SEEKING CERTIFICATION ON BEHALF OF A UNIT OF EMPLOYEES OF THE RESPONDENT DESCRIBED AS:

"ALL EMPLOYEES OF MATTHEWS GROUP LIMITED WORKING WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS, AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND THOSE ABOVE THE RANK OF NON-WORKING FOREMEN (sic).

4. THE RESPONDENT HAS OPPOSED THIS APPLICATION ON THE GROUNDS THAT IT IS UNTIMELY. IT IS THE POSITION OF THE RESPONDENT THAT THE EMPLOYEES AFFECTED BY THIS APPLICATION (WHO WERE ON THE DATE OF THE MAKING OF THIS APPLICATION WORKING ON TWO JOB-SITES WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING) ARE COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT. IN ADDITION, THE RESPONDENT ARGUES THAT THE BARGAINING UNIT OF EMPLOYEES CLAIMED TO BE APPROPRIATE BY THE APPLICANT IS INAPPROPRIATE FOR COLLECTIVE BARGAINING FOR THREE REASONS. FIRSTLY, BECAUSE THE EMPLOYEES OF THE RESPONDENT WOULD BE CONFUSED BY IT AND WOULD THEREFORE LEAD TO JEALOUSY AND "BACKSTABBING" BETWEEN THEM AND DESTROY A STABLE AND AMICABLE WORK-FORCE. SECONDLY, BECAUSE THE APPLICANT IS SEEKING A PROJECT CERTIFICATION, AND, THIRDLY, BECAUSE OF THE INTERCHANGE OF EMPLOYEES BETWEEN THE RESPONDENT'S BASE OF OPERATIONS IN LONDON AND THE JOB-SITES WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING.

5. CONSIDERING THE POSITION OF THE RESPONDENT WITH RESPECT TO THE ALLEGED SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE APPLICANT, IT WAS ESTABLISHED BEFORE THE BOARD THAT THIS ALLEGED SUBSISTING COLLECTIVE AGREEMENT HAS BEEN EXECUTED BY THE RESPONDENT BUT HAS NOT BEEN EXECUTED BY THE APPLICANT. HOWEVER, THE PARTIES AGREED THAT THEY WERE PARTIES TO A RECENTLY EXPIRED COLLECTIVE AGREEMENT (SIMILAR TO THE ALLEGED COLLECTIVE AGREEMENT AND REFERRED TO ABOVE) WHICH WAS MADE ON AND EFFECTIVE FROM JULY 7, 1969 UNTIL JULY 6, 1971. HOWEVER, HAVING REGARD TO THE EVIDENCE BEFORE THE BOARD, IT IS CLEAR THAT THE APPLICANT HAS, BY VIRTUE OF ARTICLES 1 AND 2 OF THE SAID RECENTLY EXPIRED COLLECTIVE AGREEMENT, BARGAINING RIGHTS WITH RESPECT TO ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS, AND SIMILAR EQUIPMENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMEN (sic) IN THE COUNTIES OF OXFORD, PERTH, HURON, BRUCE, MIDDLESEX, ELGIN AND LAMBTON.

6. THE RESPONDENT RELIED UPON ARTICLES 10 AND 11 OF THE SAID COLLECTIVE AGREEMENT IN SUPPORT OF ITS CLAIM THAT THE EMPLOYEES AFFECTED BY THIS APPLICATION WERE ALREADY COVERED BY AN ALLEGED SUBSISTING COLLECTIVE AGREEMENT. ARTICLES 10 AND 11 READ AS FOLLOWS:

AUTOMOBILE EXPENSES:

A. WHEN EMPLOYEES COVERED BY THIS AGREEMENT ARE REQUIRED TO TRAVEL TO AND FROM A WORKSITE IN EXCESS OF A RADIUS OF FIVE (5) MILES FROM THE CITY OF LONDON BOUNDARIES, SUITABLE TRANSPORTATION, IF NECESSARY, SHALL BE PROVIDED BY THE COMPANY.

B. IF EMPLOYEES ARE REQUIRED TO USE THEIR OWN TRANSPORTATION, THE COMPANY WILL PAY, BY THE MOST PRACTICAL DIRECT ROUTE, FOR THE FIRST TWENTY-FIVE (25) MILES FROM THE CITY OF LONDON CITY HALL, \$2.50 PER DAY TO EACH EMPLOYEE, AND FOR OVER TWENTY-FIVE (25) MILES AND NOT IN EXCESS OF FIFTY (50) MILES, \$4.00 PER DAY.

C. WHERE OPERATIONS OF THE COMPANY REQUIRE EMPLOYEES TO TRANSFER FROM JOB TO JOB AND FROM PLACE TO PLACE, AND WHERE THE DISTANCE OF FORTY-FIVE (45) MILES OR MORE IS IN EXCESS OF THE ABOVE MENTIONED CITY OF LONDON BOUNDARIES, THEN PROVIDED THE EMPLOYEE REMAINS WITH THE COMPANY FOR THE DURATION OF THE JOB, THE COMPANY AGREES TO PAY THE COST OF TRAIN FARE BETWEEN THE TWO POINTS AND REIMBURSE FOR MEALS AND ACCOMMODATIONS EN ROUTE.

BOARD ALLOWANCE:

A. EMPLOYEES ON JOBS BEYOND FIFTY (50) MILES FROM THE CITY OF LONDON CITY HALL SHALL RECEIVE BOARD ALLOWANCE OF \$7.00 PER DAY, AND ABOVE THE WEEKLY EARNINGS, THE COMPANY WILL ASSIST THE EMPLOYEES IN SECURING SUITABLE ACCOMMODATIONS.

B. EMPLOYEES ON JOBS OR PROJECTS ONE HUNDRED (100) MILES OR MORE FROM THE CITY OF LONDON CITY HALL SHALL RECEIVE AN AMOUNT EQUIVALENT TO BUS FARE FROM PROJECT TO LONDON AND RETURN ONCE EVERY TWO (2) WEEKS.

C. WHERE EMPLOYEES ARE REQUIRED TO WORK ON PROJECTS ONE HUNDRED (100) MILES OR MORE FROM THE CITY OF LONDON CITY HALL, THE COMPANY MAY PROVIDED SUITABLE ACCOMMODATION FOR THE EMPLOYEE AND HIS FAMILY IN LIEU OF BOARD ALLOWANCE AS PER ARTICLE 11 A.

7. THE RESPONDENT ARGUED THAT THE PROVISIONS CONTAINED IN ARTICLES 10 AND 11 WERE SUFFICIENT TO INDICATE THAT THE EMPLOYEES AFFECTED BY THIS APPLICATION FOR CERTIFICATION WERE COVERED BY THE ALLEGED SUBSISTING AGREEMENT. THE RESPONDENT CITED THE FACT THAT IT HAD PAID THE EXPENSES AND ALLOWANCES TO ITS EMPLOYEES WHO HAD MOVED FROM LONDON TO THE JOB-SITES IN SUDBURY. THERE IS CERTAINLY NOTHING INCONSISTENT IN HAVING THE PROVISIONS OF ARTICLES 10 AND 11 IN THE RECENTLY EXPIRED COLLECTIVE AGREEMENT HAVING REGARD TO THE EXTENSIVE GEOGRAPHIC AREA INCLUDED IN THE RECENTLY EXPIRED COLLECTIVE AGREEMENT. HOWEVER, THE FACT THAT THE RESPONDENT HAS UNILATERALLY EXTENDED SOME OF THE PROVISIONS CONTAINED IN THE RECENTLY EXPIRED COLLECTIVE AGREEMENT TO COVER THE TWO JOB-SITES NEAR SUDBURY WHICH WERE NOT INCLUDED IN THE GEOGRAPHIC AREA CONTAINED IN THE RECENTLY EXPIRED COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT DOES NOT IN ITSELF EXTEND THE BARGAINING RIGHTS OF THE APPLICANT TO COVER THE EMPLOYEES AFFECTED BY THIS APPLICATION. THERE WAS NO EVIDENCE BEFORE THE BOARD THAT BOTH THE APPLICANT AND THE RESPONDENT HAD EITHER AGREED TO EXTEND THE RECENTLY EXPIRED COLLECTIVE AGREEMENT OR HAD AMENDED IT IN WRITING TO COVER THE SUDBURY AREA. REFERENCE IS MADE TO THE G & H STEEL SERVICE OF CANADA LTD CASE, O.L.R.B. MONTHLY REPORT MARCH 1964, P. 670. THE BOARD THEREFORE FINDS THAT THE RECENTLY EXPIRED COLLECTIVE AGREEMENT IS NOT A BAR TO THIS APPLICATION FOR CERTIFICATION.

8. WITH RESPECT TO THE ADDITIONAL ARGUMENTS RAISED BY THE RESPONDENT, THERE IS NEITHER EVIDENCE BEFORE THE BOARD NOR ANY BASIS FOR DRAWING ANY INFERENCE THAT THE EMPLOYEES AFFECTED BY THIS APPLICATION WOULD EITHER BECOME CONFUSED OR DESTROY THEIR PRESENT EMPLOYMENT RELATIONSHIP WITH THE RESPONDENT. ANY PROBLEMS IN THIS AREA WHICH ARE SURMISED BY THE RESPONDENT ARE MORE PROPERLY THE SUBJECT OF COLLECTIVE BARGAINING BETWEEN THE APPLICANT AND THE RESPONDENT. THE ARGUMENT OF THE RESPONDENT THAT THE APPLICANT IS SEEKING A PROJECT CERTIFICATION FAILS BECAUSE IT IS QUITE CLEAR THAT THE APPLICANT IS SEEKING CERTIFICATION WITH RESPECT TO REGULAR BOARD GEOGRAPHIC AREA #17. THE ARGUMENT OF THE RESPONDENT IN THIS REGARD APPEARS TO STEM FROM ITS MISCONCEPTION THAT SIMPLY BECAUSE THE APPLICATION IS BASED ON TWO PROJECTS IN THE SUDBURY AREA THAT THIS APPLICATION MUST NECESSARILY BE WITH RESPECT TO A PROJECT CERTIFICATION. MANIFESTLY THIS IS NOT THE CASE, AND, AS THE BOARD POINTED OUT ABOVE, THE APPLICANT IS SEEKING CERTIFICATION ON BEHALF OF A UNIT OF EMPLOYEES WHICH IS DEFINED WITH RESPECT TO A GEOGRAPHIC AREA. WITH REGARD TO THE THIRD ARGUMENT RAISED BY THE RESPONDENT, THE BOARD SEES NO REASON TO DENY CERTIFICATION TO THE APPLICANT SIMPLY BECAUSE OF THE RESPONDENT'S PREFERRED METHOD OF CONDUCTING ITS OPERATIONS. IT IS BY NO MEANS UNCOMMON IN THE CONSTRUCTION INDUSTRY TO ENCOUNTER A SITUATION WHERE AN EMPLOYER MOVES ITS EMPLOYEES FROM ITS BASE OF OPERATIONS TO WHEREVER IT PERFORMS ITS BUSINESS. SUCH A SITUATION

HAS NOT IN ITSELF BEEN HELD BY THE BOARD AS A GROUND FOR DENYING CERTIFICATION TO AN APPLICANT IN AN APPLICATION FOR CERTIFICATION FILED UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT.

9. HAVING REGARD TO THE FOREGOING THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

10. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON DECEMBER 15, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

11. IN THE RESULT A CERTIFICATE WILL ISSUE TO THE APPLICANT.

CASE LISTINGS DECEMBER 1971

	PAGE
1. CERTIFICATION	
(A) BARGAINING AGENTS CERTIFIED	277
(B) APPLICATIONS DISMISSED	290
(C) APPLICATIONS WITHDRAWN	295
2. APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS	296
3. APPLICATIONS FOR CONSENT TO PROSECUTE	298
4. COMPLAINTS UNDER SECTION 79 (FORMERLY S. 65) (UNFAIR LABOUR PRACTICE)	298
5. APPLICATIONS UNDER SECTION 39 (FORMERLY S. 35 (A))	299
6. JURISDICTIONAL DISPUTES	300
7. REFERENCES TO BOARD PURSUANT TO SECTION 96 (FORMERLY S. 79A)	300
8. APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION	301

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD
DURING DECEMBER 1971

BARGAINING AGENTS CERTIFIED DURING DECEMBER

NO VOTE CONDUCTED

697-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CORPORATION OF HURON COLLEGE (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT THE WARDEN, THE BURSAR AND THE LIBRARIAN, AND PERSONS ABOVE THE RANK OF THE WARDEN, THE BURSAR AND THE LIBRARIAN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (16 EMPLOYEES IN THE UNIT).

830-71-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION (APPLICANT) V. DOMINION GLASS COMPANY LIMITED (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT IN ITS BRAMALEA PLANT OFFICE AT 100 WEST DRIVE, BRAMALEA, IN THE TOWNSHIP OF CHINGUACOUSY, SAVE AND EXCEPT SUPERVISORS (INCLUDING CHIEF LOCATOR CLERK), PERSONS ABOVE THE RANK OF SUPERVISOR (INCLUDING CHIEF LOCATOR CLERK), QUALITY CONTROL COMPLAINTS ANALYST, PERSONNEL DEPARTMENT, (INCLUDING NURSES AND BENEFITS' CLERK), PURCHASING AGENTS, PAYMASTER, SECRETARIES TO THOSE ABOVE THE RANK OF DEPARTMENT MANAGER, HEAD OFFICE STAFF, SECURITY GUARDS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, OR ON A CO-OPERATIVE TRAINING BASIS WITH A SCHOOL OR UNIVERSITY, PERSONS AT PRESENT REPRESENTED FOR COLLECTIVE BARGAINING PURPOSES BY THE UNITED GLASS & CERAMIC WORKERS UNION OF AMERICA, AND THE CANADIAN UNION OF OPERATING ENGINEERS." (27 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

879-71-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. MILL FARM PRODUCE LTD. (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (7 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL STUDENTS EMPLOYED BY THE RESPONDENT DURING THE SCHOOL VACATION PERIOD." (2 EMPLOYEES IN THE UNIT).

907-71-R: SERVICE EMPLOYEES UNION, LOCAL 210 (APPLICANT) V. BROUILLETTE'S MANOR LIMITED (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TECUMSEH, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, MEDICAL STAFF, OFFICE STAFF, PERSONS REGULARLY FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (17 EMPLOYEES IN THE UNIT).

1102-71-R: SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 532, AFFILIATED WITH A.F. of L., C.I.O., C.L.C. (APPLICANT) V. EXTENDICARE (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN OAKVILLE, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR AND FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (38 EMPLOYEES IN THE UNIT).

1103-71-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F. of L., C.I.O., C.L.C. (APPLICANT) V. EXTENDICARE (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN LONDON, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, SUPERVISOR, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR AND FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (34 EMPLOYEES IN THE UNIT).

1118-71-R: RETAIL CLERKS UNION, LOCAL 486, CHARTERED BY RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. PROVIGO (OTTAWA) INC. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES IN CORNWALL, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (13 EMPLOYEES IN THE UNIT).

1131-71-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. BELTON HOTEL LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SUDBURY REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK IN ITS BEVERAGE ROOMS AND COCKTAIL LOUNGES, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER." (7 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1135-71-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. NORESKO MANUFACTURING CO. LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (88 EMPLOYEES IN THE UNIT).

(SEE DECISION [1971] OLRB REP. 822).

1197-71-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. EMPIRE BENTWOOD INDUSTRIES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAWKESBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (44 EMPLOYEES IN THE UNIT). (FOR PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE DRAFTSMAN IS EXCLUDED FROM THE BARGAINING UNIT UNDER THE CLASSIFICATION OF OFFICE STAFF).

1201-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. MATTAWA GENERAL HOSPITAL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MATTAWA, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENTS DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND OFFICE STAFF." (31 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSE OF CLARITY THE BOARD NOTED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS).

1207-71-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. NATIONAL GROCERS COMPANY LIMITED (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT BRAMALEA, SAVE AND EXCEPT ASSISTANT OFFICE MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT OFFICE MANAGER, DISPATCHERS, PAYROLL SUPERVISOR, RETAIL ACCOUNTING SUPERVISOR, DATA RECEIVING CO-ORDINATOR, ORDER TAKERS, SALESMEN, BUYERS, CONFIDENTIAL SECRETARIES TO THE OFFICE AND BRANCH MANAGERS, THOSE ON HEAD OFFICE PAYROLL, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (18 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1212-71-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. INDUSTRIAL FASTENERS LIMITED (ROLLING MILL DIVISION) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT L'ORIGNAL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (30 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1214-71-R: NURSES' ASSOCIATION OF THE LAKEHEAD REGIONAL SCHOOL OF NURSING (APPLICANT) V. LAKEHEAD REGIONAL SCHOOL OF NURSING (RESPONDENT).

UNIT: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT AT THUNDER BAY, SAVE AND EXCEPT CO-ORDINATOR AND PERSONS ABOVE THE RANK OF CO-ORDINATOR." (27 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES).

1226-71-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL NO. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. H. T. REAUME CONSTRUCTION LIMITED (RESPONDENT) V. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION #494 (INTERVENER #1) V. TEAMSTERS CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 880 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (INTERVENER #2) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER #3) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL UNION NO. 700, 2362 CENTRAL AVE., WINDSOR 19, ONTARIO (INTERVENER #4) V. LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 625 (INTERVENER #5).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, AND ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

1239-71-R: THE CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (APPLICANT) V. BUCKLEY CARTAGE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND DISPATCHERS, PERSONS ABOVE THE RANK OF FOREMAN AND DISPATCHER, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (50 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1242-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. ROCKET TRAILERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN KITCHENER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (38 EMPLOYEES IN THE UNIT).

1243-71-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. THE PURITY DAIRIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT EMPLOYEES COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, BRANCH ADMINISTRATOR, AREA SALES MANGER, PERSONS ABOVE THE RANK OF BRANCH ADMINISTRATOR OR AREA SALES MANAGER, SALES REPRESENTATIVES, PERSONS EMPLOYED AS VACATION RELIEF AND PERSONS EMPLOYED NOT MORE THAN 24 HOURS PER WEEK." (2 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1260-71-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. BIG 4 BUILDERS SUPPLY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ST. THOMAS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (10 EMPLOYEES IN THE UNIT).

1276-71-R: SERVICE EMPLOYEES UNION, LOCAL 204 AFFILIATED WITH THE AFL:CIO:CLC (APPLICANT) V. LYNDBURST LODGE HOSPITAL (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, REHABILITATION COUNSELLORS, SUPERVISORS OF FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (39 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1278-71-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. SUPERIOR SERVICE STATION MAINTENANCE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE CITY OF THUNDER BAY, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (8 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1285-71-R: FUEL, BUS, LIMOUSINE, PETROLEUM DRIVERS AND ALLIED EMPLOYEES, TEAMSTERS LOCAL UNION 352 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. COMPAGNIA SUPERIORE NAFTA (1970) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT DISPATCHER, PERSONS ABOVE THE RANK OF DISPATCHER AND OFFICE AND SALES STAFF." (6 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1293-71-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. TOWN PACKERS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (16 EMPLOYEES IN THE UNIT).

1297-71-R: INTERNATIONAL UNION UNITED PLANT GUARD WORKERS OF AMERICA LOCAL 1962 (APPLICANT) V. WELLS FARGO ARMoured EXPRESS, LTD. (RESPONDENT).

UNIT: "ALL SECURITY GUARDS IN THE EMPLOY OF THE RESPONDENT WORKING IN AND OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (13 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1300-71-R: PRINTING SPECIALTIES AND PAPER PRODUCTS, UNION LOCAL 466 (APPLICANT) V. OXFORD PENDAFLEX CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, LUNCH ROOM EMPLOYEES AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT, EFFECTIVE OCTOBER 7, 1971." (50 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1303-71-R: TEAMSTERS LOCAL UNION 647 MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES AFFILIATED WITH THE INTERNA-

TIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. BRIGNALL'S PORT PERRY AREA AMBULANCE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PORT PERRY, SAVE AND EXCEPT DISPATCHERS, PERSONS ABOVE THE RANK OF DISPATCHER AND OFFICE STAFF." (3 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1312-71-R: LOCAL 305, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. NICKEL CITY BEVERAGES (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (19 EMPLOYEES IN THE UNIT).

1316-71-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. FASSEL CONSTRUCTION CO. LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

1318-71-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA LOCAL 880 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. CHILDERS PRODUCTS COMPANY A DIVISION OF TERKEL INSULATION PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (8 EMPLOYEES IN THE UNIT).

1321-71-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, TEAMSTERS LOCAL UNION 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. FLAMINGO PASTRIES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PORT PERRY, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS

PER WEEK." (67 EMPLOYEES IN THE UNIT).

1332-71-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. NORTH SIMCOE ELECTRICAL CONTRACTING LTD. (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF HOPE IN THE COUNTY OF DURHAM AND THE TOWNSHIPS OF SOUTH MONAGHAN, HAMILTON, HALDIMAND AND ALNWICK IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

1333-71-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS LOCAL UNION 721 (APPLICANT) V. SKYWAY EQUIPMENT CO. (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

1337-71-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. MARKWELL CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES, AND ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

1348-71-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. ONTARIO FOOD TERMINAL BOARD (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT ITS PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (5 EMPLOYEES IN THE UNIT).

1354-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. MATTHEWS GROUP LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME,

SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

(SEE DECISION [1971] OLRB REP. 823).

1357-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION #493 (APPLICANT) V. DESOURDY CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

1362-71-R: CHRISTIAN TRADE UNIONS OF CANADA (LOCAL 6) (APPLICANT) V. BERNIE'S LIGHTING SERVICE LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LAMBTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

1363-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. DESOURDY CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

1366-71-R: LUMBER AND SAWMILL WORKERS UNION, LOCAL 2693 OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. ACADEMY HEIGHTS LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE SURVEYOR'S HELPER IS NOT INCLUDED IN THE BARGAINING UNIT).

1369-71-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. MOBILE WELDING OF SUDBURY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (11 EMPLOYEES IN THE UNIT).

APPLICATION CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

959-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. THE VALLEY CITY MANUFACTURING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN THE TOWN OF DUNDAS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, INSTALLERS, OFFICE, CLERICAL AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (114 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		108
NUMBER OF PERSONS WHO CAST BALLOTS		104
NUMBER OF SPOILED BALLOTS	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	55	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	47	

(SEE DECISION [1971] OLRB REP. 773).

APPLICATIONS CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

18662-70-R: CANADIAN MERCHANDISING EMPLOYEES' UNION (APPLICANT) V. GOLDSTEIN FOODMART LTD. (RESPONDENT) V. RETAIL CLERKS UNION, LOCAL NO. 486 CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION (INTERVENER #1) V. RETAIL CLERKS INTERNATIONAL ASSOCIATION (INTERVENER #2).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT OTTAWA, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (12 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		11
NUMBER OF PERSONS WHO CAST BALLOTS		11
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	11	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER #1 RETAIL CLERKS INTERNATIONAL ASSOCIATION, LOCAL 486	0	

18663-70-R: CANADIAN MERCHANDISING EMPLOYEES' UNION (APPLICANT) V. GOLDSTEIN FOODMART LTD. (RESPONDENT) V. RETAIL CLERKS UNION, LOCAL

No. 486 CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION (INTERVENER #1) V. RETAIL CLERKS INTERNATIONAL ASSOCIATION (INTERVENER #2).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT OTTAWA REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (9 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	9
NUMBER OF PERSONS WHO CAST BALLOTS	9
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	9
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER #1, RETAIL CLERKS INTERNATIONAL ASSOCIATION, LOCAL 486	0

823-71-R: CANADIAN FOOD AND ALLIED WORKERS, LOCAL UNION 175, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA AFL-CIO-CLC (APPLICANT) V. M. LOEB (LONDON) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT CARRYING ON BUSINESS UNDER THE NAME OF K-MART FOODS AT ITS RETAIL STORES IN VESPRE TOWNSHIP, SAVE AND EXCEPT ASSISTANT STORE MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT STORE MANAGER, MEAT DEPARTMENT EMPLOYEES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (12 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	9
NUMBER OF PERSONS WHO CAST BALLOTS	7
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	6
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	1

862-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. TOWN OF THOROLD, ONTARIO (RESPONDENT).

UNIT: "ALL CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT THOROLD, SAVE AND EXCEPT CLERK, DEPUTY CLERK, TREASURER, DEPUTY TREASURER, PROFESSIONAL ENGINEERS, SECRETARY TO THE MAYOR, CLERK, TREASURER AND TO THE TOWN ENGINEER, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND ON A CO-OPERATIVE TRAINING BASIS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS COVERED BY SUBSISTING AGREEMENTS BETWEEN THE TOWN AND (A) CANADIAN UNION

OF PUBLIC EMPLOYEES AND ITS LOCAL 151, AND (B) THOROLD FIREFIGHTERS ASSOCIATION LOCAL #1182 OF INTERNATIONAL ASSOCIATION OF FIREFIGHTERS." (11 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		11
NUMBER OF PERSONS WHO CAST BALLOTS	11	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	6	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	5	

1030-71-R: THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (APPLICANT) V. AREA MUNICIPALITY OF THE TOWN OF HUNTSVILLE (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (23 EMPLOYEES IN THE UNIT). (THE BOARD FURTHER STATED IN ITS DECISION DATED OCTOBER 21ST, 1971: "... THAT PERSONS CLASSIFIED AS BY-LAW ENFORCEMENT OFFICER ARE EXCLUDED FROM THE BARGAINING UNIT UNDER THE CLASSIFICATION OF OFFICE STAFF.").

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		21
NUMBER OF PERSONS WHO CAST BALLOTS	21	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	11	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	10	

1040-71-R: SERVICE EMPLOYEES UNION, LOCAL 204 AFFILIATED WITH THE S.E.I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. GUILDWOOD VILLA NURSING HOME (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN AND OFFICE STAFF." (30 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		31
NUMBER OF PERSONS WHO CAST BALLOTS	21	
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	20	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0	

1070-71-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION 141 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. CATHCART TRUCK LINES (TORONTO) LTD. (RESPONDENT) V. CANADIAN TRANSPORTATION WORKERS UNION #188 (INTERVENER). (APPLICANT DISMISSED).

- AND -

1092-71-R: CANADIAN TRANSPORTATION WORKERS UNION #188 (APPLICANT) V. CATHCART TRUCK LINES (TORONTO) LTD. (RESPONDENT) V. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION 141 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (INTERVENER). (APPLICANT CERTIFIED).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF LONDON, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, DISPATCHER AND OFFICE AND SALES STAFF." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	5
NUMBER OF PERSONS WHO CAST BALLOTS	5
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT, TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION 141	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT, CANADIAN TRANSPORTATION WORKERS UNION #188	4

1144-71-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. HANFORD LUMBER LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (46 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	36
NUMBER OF PERSONS WHO CAST BALLOTS	35
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	21
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	14

1159-71-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. ENTERPRISE SALES & DISTRIBUTORS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (25 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	25
NUMBER OF PERSONS WHO CAST BALLOTS	25
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	17
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	8

1204-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF VALLEY EAST (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (11 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	11
NUMBER OF PERSONS WHO CAST BALLOTS	11
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	8
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793	3

APPLICATIONS FOR CERTIFICATION DISMISSED DURING DECEMBER

No Vote Conducted

858-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. COMMUNITY NURSING HOMES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (47 EMPLOYEES).

1002-71-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. GWELL INVESTMENTS LTD. (RESPONDENT). (8 EMPLOYEES).

1145-71-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. DAREN ENTERPRISES (RESPONDENT). (2 EMPLOYEES).

1165-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE WEL-LAND COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WELLAND, SAVE AND EXCEPT DEPARTMENT HEADS, PERSONS ABOVE THE RANK OF DEPARTMENT HEAD, CONFIDENTIAL SECRETARY TO SUPERINTENDENT OF EDUCATION AND SECRETARY TREASURER, CONFIDENTIAL SECRETARY TO THE BOARD, GENERAL CLERK - PERSONNEL DEPARTMENT, PERSONS COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL #1317." (66 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1233-71-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 607 (APPLICANT) V. CAMERON DRILLING COMPANY LIMITED (FORT FRANCES) C & L EQUIPMENT (HUNTSVILLE, ONTARIO) (RESPONDENT). (3 EMPLOYEES).

1311-71-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. WERLICH INDUSTRIES LIMITED (RESPONDENT). (145 EMPLOYEES).

1326-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE DOCTORS HOSPITAL (RESPONDENT). (226 EMPLOYEES).

1328-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE ROMAN CATHOLIC SEPARATE SCHOOL BOARD DISTRICT OF SUDBURY (RESPONDENT). (69 EMPLOYEES).

1349-71-R: LOCAL 1190 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. 228095 INVESTMENTS LIMITED, CARRYING ON BUSINESS UNDER THE NAME OF ADENA FORMING LTD. (RESPONDENT) V. CANADIAN UNION OF CONSTRUCTION WORKERS (INTERVENER #1) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (INTERVENER #2). (11 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

1247-71-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. MAPLE LODGE FARMS LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF CHINQUACOUSY, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (170 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		169
NUMBER OF PERSONS WHO CAST BALLOTS	163	
NUMBER OF SPOILED BALLOTS	5	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	30	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	128	

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

455-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183, (ROCK AND TUNNEL WORKERS DIVISION) (APPLICANT) V. INDUSTRIAL-MINE INSTALLATIONS LIMITED AND I.M.I. UNDERGROUND CONTRACTORS LIMITED (RESPONDENTS).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES; ALL IRONWORKERS; ALL MILLWRIGHTS AND MILLWRIGHTS' APPRENTICES; ALL DRYMEN, LEADERS, WELDERS, MINERS AND HOISTMEN IN THE EMPLOY OF THE RESPONDENTS IN THE CONSTRUCTION OPERATIONS WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (55 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		42
NUMBER OF PERSONS WHO CAST BALLOTS	42	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	13	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	29	

689-71-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. ZEHRE'S MARKETS LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT GUELPH REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (109 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		98
NUMBER OF PERSONS WHO CAST BALLOTS	61	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	24	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	37	

821-71-R: HOTELS, CLUBS, RESTAURANTS, TAVERN EMPLOYEES UNION LOCAL 261, OTTAWA, ONTARIO, AFFILIATED WITH AFL-CIO-CLC (APPLICANT) v. COMMONWEALTH HOLIDAY INNS OF CANADA LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS INN AT 350 DALHOUSIE STREET IN THE CITY OF OTTAWA, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND SALES STAFF, SECURITY STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (84 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	64
NUMBER OF PERSONS WHO CAST BALLOTS	60
NUMBER OF SPOILED BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	26
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	32

884-71-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. FOSTER PARENTS PLAN OF CANADA (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND CONFIDENTIAL SECRETARY TO THE NATIONAL DIRECTOR." (19 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'	
LIST	15
NUMBER OF PERSONS WHO CAST BALLOTS	15
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	4
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	11

1094-71-R: CANADIAN TRANSPORTATION WORKERS UNION #200 (APPLICANT) v. CATHCART FREIGHT LINES (PETERBOROUGH) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PETERBOROUGH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DISPATCHERS, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (13 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		13
NUMBER OF PERSONS WHO CAST BALLOTS	11	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	2	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	9	

1122-71-R: READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, TEAMSTERS LOCAL UNION No. 230, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. LEITRIM READY-MIX LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (7 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		6
NUMBER OF PERSONS WHO CAST BALLOTS	6	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	2	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	4	

1130-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1190 (APPLICANT) V. ROYAL CARPENTERS (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		7
NUMBER OF PERSONS WHO CAST BALLOTS	7	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	2	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	5	

1138-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1190 (APPLICANT) V. FERAD CARPENTERS LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICE IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMAN." (30 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	26
NUMBER OF PERSONS WHO CAST BALLOTS	21
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	7
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	14

1192-71-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UE) (APPLICANT) V. ENRICO MANUFACTURING LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (106 EMPLOYEES IN THE UNIT). (THE BOARD FURTHER STATED IN ITS DECISION DATED NOVEMBER 29TH, 1971: "... THAT ASSISTANT FOREMEN AND QUALITY CONTROL AUDITORS ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT. THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES THAT TIME-KEEPERS, ENGINEERS AND DRAFTSMEN ARE EXCLUDED FROM THE BARGAINING UNIT UNDER THE CLASSIFICATION OF OFFICE STAFF.).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	101
NUMBER OF PERSONS WHO CAST BALLOTS	97
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	31
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	65

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING DECEMBER

1027-71-R: THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (APPLICANT) V. VICTORIA HOSPITAL BOARD OF TRUSTEES OF THE CITY OF LONDON (RESPONDENT). (31 EMPLOYEES).

1241-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. DOW CHEMICAL OF CANADA, LIMITED (RESPONDENT). (2 EMPLOYEES).

1255-71-R: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF UNITED STATES AND CANADA, LOCAL 117 (APPLICANT) V. RELIABLE PLASTERING CO. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (77 EMPLOYEES).

1269-71-R: LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION LOCAL 224 (APPLICANT) V. LOVE PRINTING SERVICE LTD. (RESPONDENT). (32 EMPLOYEES).

1292-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA - LOCAL 527 (APPLICANT) V. WILLIAM S. BURNSIDE LIMITED (RESPONDENT). (3 EMPLOYEES).

1325-71-R: LOCAL 12-L, TORONTO, LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION (APPLICANT) V. CHALLIS JACKSON POHLAK LITHOGRAPHERS LIMITED (RESPONDENT). (4 EMPLOYEES).

1331-71-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. COULSON HOTEL (RESPONDENT). (2 EMPLOYEES).

1342-71-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. CROOKS REXALL PHARMACY AND TARGET DISCOUNT PHARMACY (RESPONDENT). (72 EMPLOYEES).

1343-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. ALLY CONSTRUCTION CO. LTD. (RESPONDENT). (35 EMPLOYEES).

1364-71-R: LENNOX AND ADDINGTON CUSTODIAN ASSOCIATION (APPLICANT) V. THE LENNOX AND ADDINGTON COUNTY BOARD OF EDUCATION (RESPONDENT). (4 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED
OF DURING DECEMBER

978-71-R: WILLIAM TURTLE (APPLICANT) V. INTERNATIONAL BROTHERHOOD OF BOOKBINDERS LOCAL NO. 28 (RESPONDENT) V. SOUTHAM MURRAY (A DIVISION OF THE SOUTHAM PRINTING COMPANY LIMITED) (INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES OF SOUTHAM MURRAY (A DIVISION OF THE SOUTHAM PRINTING COMPANY LIMITED) AT METROPOLITAN TORONTO AS CERTIFIED BY THE ONTARIO LABOUR RELATIONS BOARD FOR THE SOUTHAM PRINTING COMPANY LIMITED DATED SEPTEMBER 5TH, 1963 AND AS CERTIFIED BY THE ONTARIO LABOUR RELATIONS BOARD FOR MURRAY PRINTING AND GRAVURE LIMITED DATED JULY 4TH, 1958, I.E., SWEEPER, PLANT PORTER, SHIPPERS HELPER, SKID MAKER, DEPARTMENT PORTER (BINDERY, PRESSROOM, PHOTO-ENGRAVING), PAPER STORAGE, BALING MACHINE OPERATOR, TRUCK DRIVER, SHEETER HELPER, CARPENTERS HELPER,

SHIPPER-RECEIVER, TOW MOTOR OPERATOR AND SHEETER OPERATOR." (61 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	68
NUMBER OF PERSONS WHO CAST BALLOTS	62
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	28
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	33

995-71-R: FRED WEPPLER, DONALD WRIGHT, BERNIE STEVENSON AND LARRY HAMEL (APPLICANTS) V. INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA AFL-CIO-CLC (RESPONDENT) V. SEVEN-UP (ONTARIO) LIMITED (INTERVENER). (36 EMPLOYEES). (DISMISSED).

(SEE DECISION [1971] OLRB REP. 791).

1046-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. UNITED STEELWORKERS OF AMERICA (RESPONDENT) V. DELLELCE CONSTRUCTION AND EQUIPMENT (INTERVENER). (100 EMPLOYEES). (GRANTED).

(SEE DECISION [1971] OLRB REP. 778).

1057-71-R: RAYNALD COURCHESNE (APPLICANT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (RESPONDENT). (12 EMPLOYEES). (GRANTED).

1236-71-R: JOHN RICHMOND (APPLICANT) V. UNITED STEELWORKERS OF AMERICA (RESPONDENT) V. BELLOWS-VALVAIR, LTD. (INTERVENER). (16 EMPLOYEES). (DISMISSED).

(SEE DECISION [1971] OLRB REP. 771).

1280-71-R: MRS. DOROTHY CLAPDORP (APPLICANT) V. GENERAL TRUCK DRIVERS UNION, LOCAL 938, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT). (18 EMPLOYEES). (GRANTED).

1283-71-R: EMPLOYEES OF BEAUTY INDUSTRIES LIMITED, 272 SHERMAN AVENUE NORTH, HAMILTON, ONTARIO (APPLICANT) V. THE AMALGAMATED CLOTHING WORKERS OF AMERICA (RESPONDENT) V. BEAUTY INDUSTRIES LIMITED (INTERVENER). (116 EMPLOYEES). (DISMISSED).

1299-71-R: THE EMPLOYEES OF MIRON CO. LTD. OTTAWA BRANCH (APPLICANT) V. UNITED CEMENT LIME AND GYPSUM WORKERS INTERNATIONAL UNION LOCAL 384 (RESPONDENT). (5 EMPLOYEES). (DISMISSED).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING DECEMBER

800-71-U: ENGLISH & MOULD LIMITED (APPLICANT) V. STANLEY NEWMARCH (RESPONDENT). (WITHDRAWN).

1174-71-U: WILSON ERECTORS LIMITED (APPLICANT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (RESPONDENT). (GRANTED).

1175-71-U: WILSON ERECTORS LIMITED (APPLICANT) V. HARVEY HERRON, ROD MCKINNON (RESPONDENTS). (GRANTED).

1182-71-U: WILSON ERECTORS LIMITED (APPLICANT) V. WILBERT A. WHITMAN, GLEN McMULLEN (RESPONDENTS). (GRANTED).

1213-71-U: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. ACRITEX YARNS LIMITED (RESPONDENT). (WITHDRAWN).

1235-71-U: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. HOOKER CHEMICAL (NANAIMO) LIMITED (RESPONDENT). (WITHDRAWN).

1378-71-U: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. TERMINAL BEEF COMPANY (RESPONDENT). (WITHDRAWN).

1286-71-U: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 636 (APPLICANT) V. FEDERAL ALARMS LIMITED AND DOMINION FIRE AND BURGLARY ALARMS LIMITED (RESPONDENTS). (GRANTED).

COMPLAINTS UNDER SECTION 79 (FORMERLY S. 65) (UNFAIR LABOUR PRACTICE)

DISPOSED OF DURING DECEMBER

988-71-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (COMPLAINANT) V. BAERT CONSTRUCTION LIMITED (RESPONDENT). (DISMISSED).

1147-71-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. THE DOCTORS HOSPITAL (RESPONDENT). (WITHDRAWN).

1166-71-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V. HANFORD LUMBER COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

1284-71-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V. RAYWAL LIMITED (RESPONDENT). (WITHDRAWN).

1298-71-U: LITHOGRAPHERS & PHOTOENGRAVERS INTERNATIONAL UNION, OTTAWA LOCAL 224 (COMPLAINANT) V. LOVE PRINTING SERVICE LTD. (RESPONDENT). (WITHDRAWN).

1335-71-U: WILLIAM M. SURGENT (COMPLAINANT) V. GLASS SECTION OF WINDSOR CONSTRUCTION ASS. (RESPONDENT). (WITHDRAWN).

1359-71-U: WILLIAM WARCHOW, ESQ., BUSINESS MANAGER, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 586 (COMPLAINANT) V. DONALD SERVANT ELECTRIC LIMITED (RESPONDENT). (WITHDRAWN).

1389-71-U: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1394 (COMPLAINANT) V. BAYVIEW VILLA NURSING HOME (RESPONDENT). (WITHDRAWN).

APPLICATIONS UNDER SECTION 39 (FORMERLY S. 35(A)) DISPOSED OF DURING

DECEMBER

118-70-M: MARTHA FOEKENS (APPLICANT) V. SERVICE EMPLOYEES' UNION LOCAL 210, S.E.I.U., -A.F.L., C.I.O., -C.L.C. (RESPONDENT TRADE UNION) V. THE SISTERS OF ST. JOSEPH OF THE DIOCESE OF LONDON IN ONTARIO (RESPONDENT EMPLOYER). (WITHDRAWN).

124-70-M: DOROTHE ELLENS (APPLICANT) V. SERVICE EMPLOYEES UNION, LOCAL 204, A.F. OF L.-C.I.O.-C.L.C. CHARTERED BY SERVICE EMPLOYEES' INTERNATIONAL UNION (RESPONDENT TRADE UNION) V. THE ST. CATHARINES GENERAL HOSPITAL (RESPONDENT EMPLOYER). (DISMISSED).

138-70-M: CORNELIS BLOKKER (APPLICANT) V. THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 152 (RESPONDENT TRADE UNION) V. THE LINCOLN COUNTY BOARD OF EDUCATION (RESPONDENT EMPLOYER). (GRANTED).

159-70-M: ROBERT VANDERHILL (APPLICANT) V. COMMUNICATIONS WORKERS OF AMERICA (RESPONDENT TRADE UNION) V. NORTHERN ELECTRIC COMPANY LIMITED (RESPONDENT EMPLOYER). (DISMISSED).

(SEE DECISION [1971] OLRB REP. 790).

223-71-M: EGBERT WITTEN (APPLICANT) V. THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 44, RECREATION DEPARTMENT (RESPONDENT TRADE UNION) V. THE CORPORATION OF THE TOWN OF BURLINGTON (RESPONDENT EMPLOYER). (GRANTED).

282-71-M: MURRAY JAMES SIDER (APPLICANT) V. THE CANADIAN FOOD AND ALLIED WORKERS, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, ON BEHALF OF LOCAL P417 (RESPONDENT TRADE

UNION) V. CANADA PACKERS LIMITED (RESPONDENT EMPLOYER). (GRANTED).

283-71-M: SAMUEL DE HAAN (APPLICANT) V. SERVICE EMPLOYEES UNION, LOCAL 210, S.E.I.U.-A.F.L.-C.I.O.-C.L.C. (RESPONDENT TRADE UNION) V. THE SISTERS OF ST. JOSEPH OF THE DIOCESE OF LONDON IN ONTARIO (RESPONDENT EMPLOYER). (WITHDRAWN).

391-71-M: JAMES FREDERICK CRIPPS (APPLICANT) V. CANADIAN FOOD AND ALLIED WORKERS AND LOCAL P479 (RESPONDENT TRADE UNION) V. BEARDMORE, A DIVISION OF CANADA PACKERS (RESPONDENT EMPLOYER). (DISMISSED).

1352-71-M: MR. ALBERT GLOVER (APPLICANT) V. TEXTILE WORKERS UNION OF AMERICA, C.L.C., A.F.L.-C.I.O. (RESPONDENT TRADE UNION) V. PENMANS LIMITED (RESPONDENT EMPLOYER). (GRANTED).

JURISDICTIONAL DISPUTES

799-71-JD: ENGLISH & MOULD LIMITED (COMPLAINANT) V. LOCAL 46, THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA AND SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL UNION NO. 30 (RESPONDENTS). (WITHDRAWN).

1142-71-JD: LEADER MASONRY & FORMING LIMITED (COMPLAINANT) V. LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837, UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 18, THE FRID CONSTRUCTION LIMITED (RESPONDENTS).

(SEE DECISION [1971] OLRB REP. 789).

1275-71-JD: DUNKER CONSTRUCTION LIMITED (COMPLAINANT) V. LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1081 THE GRAND RIVER VALLEY DISTRICT COUNCIL OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA ON BEHALF OF LOCAL UNIONS 498, 949, 1940 AND 2173 (RESPONDENTS).

(SEE DECISION [1971] OLRB REP. 813).

REFERENCES TO BOARD PURSUANT TO SECTION 96 (FORMERLY S. 79A)

1013-71-M: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1669 (TRADE UNION) V. G. A. BAERT CONSTRUCTION (1964) LTD. (EMPLOYER).

(SEE DECISION [1971] OLRB REP. 766).

1301-71-M: THE DOUGLAS AIRCRAFT COMPANY OF CANADA LTD. (EMPLOYER)
V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA, LOCAL 1967 (TRADE UNION). (DISMISSED).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

1041-71-R: CANADIAN TRANSPORTATION WORKERS UNION #199 (APPLICANT) V.
LAIDLAW TRANSPORT LIMITED (RESPONDENT). (REQUEST DENIED).

1046-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
(APPLICANT) V. UNITED STEELWORKERS OF AMERICA (RESPONDENT) V. DELLELCE
CONSTRUCTION AND EQUIPMENT (INTERVENER). (REQUEST DENIED).

1194-71-R: KENNETH THOMPSON (APPLICANT) V. HOTEL AND RESTAURANT AND
BARTENDERS INTERNATIONAL UNION, LOCAL 197 (RESPONDENT). (REQUEST
DENIED).

1206-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837
(APPLICANT) V. STEED AND EVANS LIMITED (RESPONDENT). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 79

(FORMERLY S. 65)

18928-70-U: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION,
LOCAL 327 (COMPLAINANT) V. THE BOARD OF HEALTH NORTHWESTERN HEALTH
UNIT (RESPONDENT). (REQUEST DENIED).

STATISTICAL TABLES FOR THIRD 3 MONTHS (OCTOBER - DECEMBER) FISCAL YEAR 1971-72

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	3RD 3 MONTHS	1ST 9 MONTHS FISCAL YEAR	
	FISCAL YEAR 1971-72	1971-72	1970-71
I. CERTIFICATION	228	727	811
II. DECLARATION TERMINATING BARGAINING RIGHTS	15	58	64
III. DECLARATION OF SUCCESSOR STATUS	2	14	18
IV. DECLARATION THAT STRIKE UNLAWFUL	10	39	59
V. DECLARATION THAT LOCK-OUT UNLAWFUL	-	1	3
VI. CONSENT TO PROSECUTE	21	150	125
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	47	141	117
VIII. MISCELLANEOUS	<u>29</u>	<u>91</u>	<u>73</u>
TOTAL	<u>352</u>	<u>1221</u>	<u>1270</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	3RD 3 MONTHS	1ST 9 MONTHS FISCAL YEAR	
	FISCAL YEAR 1971-72	1971-72	1970-71
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	301	792	837

TABLE IIIAPPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONSBOARD BY MAJOR TYPES

	NUMBER DISPOSED OF		
	3RD 3 MONTHS	1ST 9 MONTHS FISCAL YEAR	
	FISCAL YEAR 1971-72	1971-72	1970-71
I. CERTIFICATION	267	715	888
II. DECLARATION TERMINATING BARGAINING RIGHTS	18	56	68
III. DECLARATION OF SUCCESSOR STATUS	-	6	19
IV. DECLARATION THAT STRIKE UNLAWFUL	6	36	62
V. DECLARATION THAT LOCK-OUT UNLAWFUL	1	3	4
VI. CONSENT TO PROSECUTE	36	156	137
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	37	115	126
VIII. MISCELLANEOUS	<u>30</u>	<u>91</u>	<u>87</u>
TOTAL	<u>395</u>	<u>1178</u>	<u>1391</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARDBY TYPE AND DISPOSITION

	NUMBER OF APPLICATIONS			NUMBER OF EMPLOYEES*		
	3RD 3 MTHS	1ST 9 MTHS	F.Y.	3RD 3 MTHS	1ST 9 MTHS	F.Y.
	FISCAL YEAR	FISCAL YEAR		FISCAL YEAR	FISCAL YEAR	
	1971-72	1971-72	1970-71	1971-72	1971-72	1970-71
I. <u>CERTIFICATION</u>						
GRANTED	147	421	587	3559	11403	17494
DISMISSED	73	212	208	2295	8465	7146
WITHDRAWN	<u>47</u>	<u>82</u>	<u>93</u>	<u>865</u>	<u>1542</u>	<u>2739</u>
TOTAL	<u>267</u>	<u>715</u>	<u>888</u>	<u>6719</u>	<u>21410</u>	<u>27379</u>
II. <u>TERMINATION</u> <u>OF BARGAINING</u> <u>RIGHTS</u>						
GRANTED	7	26	36	211	2134	999
DISMISSED	9	22	23	346	649	1765
WITHDRAWN	<u>2</u>	<u>8</u>	<u>9</u>	<u>22</u>	<u>367</u>	<u>756</u>
TOTAL	<u>18</u>	<u>56</u>	<u>68</u>	<u>579</u>	<u>3150</u>	<u>3520</u>

*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD
BY TYPE AND DISPOSITION (CONTINUED)

		NUMBER OF APPLICATIONS		
		3RD 3 MONTHS FISCAL YEAR 1971-72	1ST 9 MTHS FISCAL Yr. 1971-72	1970-71
III.	<u>DECLARATION THAT STRIKE UNLAWFUL</u>			
	GRANTED	1	8	4
	DISMISSED	-	4	2
	WITHDRAWN	<u>5</u>	<u>26</u>	<u>56</u>
	TOTAL	<u>6</u>	<u>38</u>	<u>62</u>
IV.	<u>DECLARATION THAT LOCK- OUT UNLAWFUL</u>			
	GRANTED	-	-	-
	DISMISSED	-	2	2
	WITHDRAWN	<u>1</u>	<u>-</u>	<u>2</u>
	TOTAL	<u>1</u>	<u>2</u>	<u>4</u>
V.	<u>CONSENT TO PROSECUTE</u>			
	GRANTED	7	30	31
	DISMISSED	-	62	18
	WITHDRAWN	<u>29</u>	<u>64</u>	<u>88</u>
	TOTAL	<u>36</u>	<u>156</u>	<u>137</u>
VI.	<u>COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)</u>			
	GRANTED	3	15	8
	DISMISSED	5	26	31
	WITHDRAWN	<u>29</u>	<u>74</u>	<u>87</u>
	TOTAL	<u>37</u>	<u>115</u>	<u>126</u>

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF BY
THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF APPLICATIONS		
	3RD 3 MONTHS	1ST 9 MTHS FISCAL YR.	
	FISCAL YEAR 1971-72	1971-72	1970-71
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	5	24	10
POST-HEARING VOTE	18	45	34
BALLOTS NOT COUNTED	1	1	-
<u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	4	25	10
POST-HEARING VOTE	19	49	41
BALLOTS NOT COUNTED	-	1	3
TOTAL	<u>47</u>	<u>145</u>	<u>98</u>

*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY
THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	3RD 3 MONTHS	1ST 9 MTHS FISCAL YR.	
	FISCAL YEAR 1971-72	1971-72	1970-71
*RESPONDENT UNION SUCCESSFUL	-	1	3
RESPONDENT UNION UNSUCCESSFUL	<u>1</u>	<u>15</u>	<u>25</u>
TOTAL	<u>1</u>	<u>16</u>	<u>28</u>

*IN TERMINATION PROCEEDING WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

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